



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON  
REGULATIONS**

*Information contained in this document is published as received from agencies and is not edited by Thomson West.*

**TITLE 2. EMPLOYMENT TRAINING  
PANEL**

**NOTICE OF INTENTION TO AMEND  
CONFLICT-OF-INTEREST CODE**

The Employment Training Panel (ETP) intends to amend its conflict of interest code (Code) pursuant to Government Code Sections 87300 and 87306. The Code designates employees who must disclose certain economic interests including income, investments, real property and business positions to the Fair Political Practices Commission (FPPC). The designated employees may also be required to disqualify themselves from making or participating in ETP decisions affecting their economic interests. The amendment also re-casts agency positions to more accurately reflect the required level of disclosure for each listed job classification.

A 45-day written comment period extends from February 2, 2007 to March 19, 2007. Any interested person may present written comments on the proposed amendments within that period. Comments should be sent to the attention of Maureen Reilly at the following address: Legal Unit, Employment Training Panel, 1100 "J" Street (4<sup>th</sup> Floor), Sacramento, CA 95814.

A public hearing will not be held unless requested by an interested person, or his or her representative. The request must be submitted in writing to the address shown above no later than March 2, 2007.

The proposed amendments are to Appendix A and Appendix B of the Code. Appendix A identifies by "disclosure category" the "designated employees" who must disclose certain financial interests to the FPPC. Appendix B defines the Disclosure Categories under which designated employees must report various financial interests depending on his or her level of responsibility within the organization as more fully described below.

The amendment to Appendix A modifies the Account Analyst designation to exclude the job classification of Staff Services Analyst (SSA) since SSAs are not Account Analysts by ETP's own definition contained in the job description. The amendment also reflects ETP's

re-designation of its organizational work units to add the Planning and Research unit, and to eliminate the Application Review, Development, Monitoring and Resolution units, since they no longer exist on ETP's organizational chart.

Appendix B modifies and clarifies the Disclosure Categories definitions. Formerly, ETP used only one Disclosure Category, which was too broad since it led to over-reporting by lower-level positions. ETP has now divided the disclosure categories into three, primarily by level of responsibility. The less responsibility a job classification has, the less disclosure of financial interests required. For instance, while employees in Disclosure Category 1 must disclose all interests and income from any source, employees in Category 3 need only file the Statement of Economic Interest, Form 700-A. Form 700-A requires disclosure only when the employee *participates in an assignment* in which he or she has a financial interest. Otherwise, the employee need not disclose the financial interest.

ETP has determined that the proposed amendments will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Government Code section 17500 *et seq.*; nor will they result in any nondiscretionary cost or savings to local agencies. ETP has likewise determined that the proposed amendments will not result in any cost or savings in federal funding to the state, or impose a mandate on local agencies or school districts; nor do they have any potential cost impact on private persons or businesses, including small businesses.

ETP has considered alternatives to the proposed action, and determined there are none that would carry out the purpose of these amendments more effectively. ETP has also determined that no alternative would be as effective and less burdensome to affected private persons, than the proposed action.

ETP has prepared a written explanation of the reasons for these amendments, and has compiled all information on which they are based. This explanation and information, along with copies of the proposed amendments, are available for inspection at the address shown above. Any inquiries concerning the proposed amendments should be directed to Ms. Reilly at the address shown above. She may also be reached by telephone at (916) 327-5422 or by email at [mreilly@etp.ca.gov](mailto:mreilly@etp.ca.gov).

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest

codes, will review the proposed/amended conflict of interest code of the following:

#### CENTRAL COAST WATER AUTHORITY

A written comment period has been established commencing on **February 2, 2007** and closing on **March 19, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention Tara Stock, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code, proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code. Any written comments must be received no later than **March 19, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Tara Stock, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Tara Stock, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:



CONFLICT OF INTEREST CODES  
AMENDMENT

MULTI-COUNTY: Central California Tristeza  
Eradication Agency  
Great Basin Unified Air  
Pollution Control District  
Kern Community College  
District  
Kings River Conservation  
District  
Modesto Irrigation District  
Mojave Desert Air Quality  
Management District  
Peninsula Corridor Joint Powers  
Board  
Sonoma County Junior College  
District  
Sierra Joint Community College  
District  
Transbay Joint Powers Authority

A written comment period has been established commencing on **February 2, 2007**, and closing on **March 19, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 19, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS  
AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED  
CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested

in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

#### CONFLICT OF INTEREST CODES

##### ADOPTION

#### MULTI-COUNTY AGENCY: **Cooperative Agricultural Support Services Authority**

A written comment period has been established commencing on **February 2, 2007**, and closing on **March 26, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention **Kevin S. Moen, PhD**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 26, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are

not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

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Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Kevin S. Moen, PhD**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:



CONFLICT OF INTEREST CODES

AMENDMENT

MULTI-COUNTY AGENCY: **Cooperative Personnel Services**

A written comment period has been established commencing on **February 2, 2007**, and closing on **March 26, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention **Kevin S. Moen, PhD**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 26, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS  
AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Kevin S. Moen, PhD**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED  
CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Kevin S. Moen, PhD**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after March 8, 2007, at approximately 9:45 a.m. Written comments must be received at the Commission offices no later than 5:00 p.m. on March 6, 2007.

## BACKGROUND/OVERVIEW

Section 84104 of the Government Code provides: “It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter. The detailed accounts, records, bills, and receipts shall be retained by the filer for a period specified by the commission. However, the commission shall not require retention of records for a period longer than the statute of limitations specified in Section 91000.5 or two years after the adoption of an audit report pursuant to Chapter 10 (commencing with Section 90000), whichever is less.”

Regulation 18401(a)(4)(B) provides that for expenditures of \$25 or more, the duty includes maintenance of detailed information and original source documentation consisting of cancelled checks. As a result of recent changes in the federal banking laws, banks are increasingly processing checks electronically and often do not retain original cancelled checks. They may send their customers copies of checks or provide copies via the Internet. The proposed amendment would permit the use of copies of cancelled checks as original source documentation, in lieu of original cancelled checks, provided the copies are obtained from the financial institution.

## REGULATORY ACTION

Amend 2 Cal. Code Regs. § 18401: The Commission may consider whether regulation 18401 should be amended to permit the use of copies of cancelled checks, in lieu of original cancelled checks, as original source documentation, provided that the copies are obtained from the financial institution.

Following is the proposed language to be added:

“In lieu of cancelled checks, the original source documentation may consist of copies of cancelled checks that contain a legible image of the front and back of the cancelled check, provided the copy was obtained from the financial institution.”

The proposed regulatory language which may be examined by the Commission is limited to the interpretation of section 84104 and is not intended to impact other provisions of the Act.

## SCOPE

The Commission may delete provisions, adopt the language noticed herein, or choose new language to identify alternatives to cancelled checks as original source documentation for expenditures of \$25 or more.

## FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

## AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

## REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code section 84104.

## CONTACT

Any inquiries should be made to Valentina Joyce, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after **March 8, 2007**, at approximately **9:45 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **March 6, 2007**.

## BACKGROUND/OVERVIEW

The proposed amendments to regulation 18944.2 under the Political Reform Act (Government Code sections 81000-91014) relate to gifts made to a public official's agency. Under the Act's gift provisions, gifts to certain public officials and candidates for elected office

have been limited. (Sections 89503 and 86203.) Moreover, public officials and candidates who receive gifts may be subject to gift reporting requirements and disqualification rules. (Sections 87207, 87302, and 87103.)

However, in some circumstances, a gift used by an official may actually benefit the official's agency without providing any significant or unusual benefit to the official. In these circumstances, a gift is considered a gift to the agency, not to the public official(s) ultimately benefiting from the gift. Under regulation 18944.2, a gift is considered a gift to the agency, not the official, if (1) the agency receives and controls the payment, (2) the payment is used for official agency business, (3) the agency determines the official(s) who shall use the payment, and (4) the agency memorializes the payment in a written public record.

#### REGULATORY ACTION

Amend 2 Cal. Code Regs. section 18944.2: The Commission will consider amending regulation 18944.2 to clarify that a gift to an agency may still fall within the purview of regulation 18944.2 even when the donor makes a monetary payment for goods or services directly to the vendor of the goods or services. Under the regulation's existing language, when a donor makes a monetary payment for goods or services to a third party, there is a question as to whether the "receive and control" test applies to the monetary payment to the vendor or to the goods or services provided as a result of the monetary payment. The proposed amendments would clarify that an agency receives and controls a payment even when a monetary payment for goods or services is made directly to the vendor of the goods or services, so long as the agency receives and controls the use of the goods or services.

Additionally, the Commission will consider adding language to clarify that a gift providing an unusual benefit to any particular official would not be considered a gift to the agency and that a donor may not designate the class of officials who shall use the payment.

#### SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

#### FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

#### AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

#### REFERENCE

The purpose of these regulations is to implement, interpret, and make specific Government Code sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501 through 89506.

#### CONTACT

Any inquiries should be made to Brian G. Lau, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

## TITLE 2. STATE ALLOCATION BOARD

### NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND REGULATION SECTION 1859.106 AND ADOPT REGULATION SECTION 1859.106.1, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend and adopt the above-referenced regulation sections contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may

adopt the proposals substantially as set forth above without further notice.

#### **AUTHORITY AND REFERENCE CITATIONS**

The SAB is proposing to amend an existing regulation section and adopt a new regulation section under the authority provided by Section 17070.35 of the Education Code. The proposals interpret and make specific reference to Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251 of the Education Code.

#### **INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT**

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB adopted proposed emergency regulations at its October 25, 2006 meeting in order to implement the provisions of Assembly Bill 607, Chapter 704, Statutes of 2006, which allows for a repayment schedule under the School Facility Program (SFP). Financial close-out audits on SFP projects occasionally require refunds to the State in amounts that could cause a district to be in jeopardy of becoming financially insolvent and subject to oversight requirements. However, this regulatory action would permit repayments of SFP funds by school districts without causing severe hardship conditions to the school districts. If approved by the SAB, repayment schedules may be for up to five years, and shall include interest at the same rate as that charged by the Pooled Money Investment Board.

The amendment and adoption are summarized as follows:

Existing Regulation Section 1859.106 specifies allowable district expenditures and State apportionments for new construction projects, upon audit review. The proposed amendments would delete the requirement for the OPSC to initiate collection procedures from districts that do not repay amounts due to the State within 60 days, as provided in Education Code Section 17076.10(c)(1).

Proposed adoption of Regulation Section 1859.106.1 would implement alternative actions upon a school district's failure to repay Board-approved, SFP funds due to the State within 60 days. Either the OPSC will initiate collection procedures as outlined in Education Code Section 17076.10(c)(1), or the district may request a repayment schedule of up to five years upon showing that a lump sum repayment would cause the district severe financial hardship, pursuant to Education Code Section 17076.10(c)(2). To show severe financial hardship, districts would have to be on or at risk of placement on the California Department of Education (CDE) List of Negative and Qualified Certifications, or have a CDE certification of negative financial condition.

#### **IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### **ECONOMIC IMPACT**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory actions and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.



- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. This regulation only applies to school districts for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax, must be received at the OPSC no later than March 19, 2007 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Mailing Address: Robert Young, Regulation Coordinator  
Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulation(s) during the 15-day period.

#### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

## ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

## TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to repeal Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9 of the regulations in Title 3 of the California Code of Regulations pertaining to California Certified Seed Potatoes and adopt a new Section 3035, Seed Potato Certification Agencies.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before March 19, 2007.

## INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law provides that the secretary may, by regulation, designate as a seed potato certification agency, any person or agency that the Secretary finds is qualified to certify seed potatoes as to their variety, quality, and freedom from pests and diseases. In doing so, the Secretary shall consult with the University of California and representatives of the seed potato industry of California before approving the qualifications of any seed potato certification agency (Section 52651, Food and Agricultural Code).

The proposed repeal of Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8

and 3035.9 of the regulations pertaining to California Certified Seed Potatoes and the adoption of a new Section 3035, Seed Potato Certification Agencies, will establish the California Crop Improvement Association (CCIA) as the new seed potato certification agency in California. The effect of this regulation will be to establish the authority for CCIA to certify seed potatoes as to their variety, quality, and freedom from pests and diseases.

## COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Secretary of Food and Agriculture has determined that the proposed regulations do not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

## EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

## EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

## COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not: 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses within California; or, 3) affect the expansion of businesses currently doing business within California.



## ALTERNATIVES CONSIDERED

The Secretary of the Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AUTHORITY

The Department proposes to repeal Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9 and adopt a new Section 3035 pursuant to the authority vested by Sections 407 and 52651 of the Food and Agricultural Code of California.

## REFERENCE

The Department proposes this action to implement, interpret and make specific Section 52651 of the Food and Agricultural Code.

## EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

## CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

## INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet web-site ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

## TITLE 10. BUSINESS, TRANSPORTATION AND HOUSING AGENCY

### Office of Tourism

### Title 10, Chapter 7.65, Sections 5350-5358.1 Passenger Car Rental Industry Tourism Assessment

## NOTICE OF PROPOSED RULEMAKING

February 2, 2007

Notice is hereby given that the Office of Tourism proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

## PROPOSED REGULATORY ACTION

The Office proposes to amend sections 5350, 5352 and adopt new sections 5357-5358.1 in Title 10 of the California Code of Regulations in order to implement, interpret and make specific Government Code section 13995.20, 13995.65.5 and 13995.92 relating to a Passenger Car Rental Industry Tourism Assessment.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until 5:00 p.m. on March 19, 2007. Submit comments to:

Name: Terri Toohey  
Address: Office of Tourism, 980 9<sup>th</sup> Street,  
Suite 480, Sacramento, 95814  
Phone: 916-324-3787  
Email: [ttoohey@tourism.ca.gov](mailto:ttoohey@tourism.ca.gov)

### AUTHORITY AND REFERENCE

The proposed regulation has been adopted under the authority of Government Code section 13995.69 and in order to implement, interpret, and make specific Government Code sections 13995.20, 13995.65.5 and 13995.92.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Office of Tourism proposes to adopt new sections 5357, 5357.1, 5358, 5358.1 and amend sections 5350 and 5352. The regulations establish a collection process for the Passenger Car Rental Industry assessment. The regulations also amend all incorrect Government Code section references. The Tourism Marketing Act was relocated within the Government Code in 2003.

Government Code section 13995.20 establishes a fifth industry category, passenger car rental industry, within the tourism industry. Government Code section 13995.92 requires the Commission to submit a referendum to the passenger car rental industry proposing an assessment level that will generate sufficient funding for the Commission, minus amounts reverted to the general fund, for a spending plan of \$25,000,000 in 2006/07 and \$50,000,000 in 2007/08. Government Code section 13995.65.5 provides for the collection of the passenger car rental industry assessment from each rental transaction that commences at either an airport or at a hotel or other overnight lodging.

The regulations in Chapter 7.65 are divided into new subchapters to distinguish between the two assessment programs and the referendum process. Subchapter 1 shall contain the definitions that apply to all the tourism programs. Subchapter 2 shall contain the general information that pertains to the tourism assessment program, including the industry segments. Subchapter 3 shall contain the section regarding the Referendum Procedures and Subchapter 4 shall contain the sections per-

taining specifically to the Passenger Car Rental Industry Tourism Assessment.

Section 5350 provides definitions of terms used in the Tourism Assessment Program. The definitions have been editorially amended to correct Government Code sections and to delete any obsolete terms. Specific to the Passenger Car Rental Industry, three new definitions have been added. The definition of Assessment Rate provides for the calculation method the Office of Tourism uses to determine the Passenger Car Rental Industry Assessment Rate. The Passenger Car Rental Industry is defined as a company renting passenger vehicles at an airport location or accommodation location. Vehicle is defined in the Vehicle Code and is referenced in the definition. Revenue is defined as all paid time and/or mileage charges only, as shown on each concluded rental agreement, net of any discount at California Airport Locations and Accommodation locations. The definition of California Travel and Tourism Commission is added to this section and the definition of the Office of Tourism is amended.

Section 5352 provides for each of the four existing industry segments and lists the businesses in that industry segment. This has been amended to add a fifth industry segment, Passenger Car Rental Industry and removes passenger car rentals from the Transportation and Travel Services Industry Segment.

Section 5357 identifies the type of businesses that are included in this new passenger car rental industry assessment.

Section 5357.1 establishes the annual requirements for the Office of Tourism to determine the Passenger Car Rental Industry's assessment.

Section 5357.2 establishes the provisions for payment of the assessment by the Passenger Car Rental Industry. This section also provides for the Passenger Car Rental Industry Assessment Form which is required to accompany all payments. The form will require the company's identification information, the data on which the payment is calculated, and the signature of the company's authorized representative.

Section 5358 provides for the confidentiality of all information and data submitted to the Office of Tourism by the rental car industry.

Section 5358.1 provides for the continuation of the Passenger Car Rental Industry Assessment until the next industry referendum in 2013 or until a time when the pass through provisions are subsequently prohibited or impaired.

### DISCLOSURES REGARDING THE PROPOSED ACTION

The Office of Tourism has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on private persons or directly affected businesses: These regulations, which implement existing statute, will have a minimal financial impact on any persons or businesses renting passenger cars at airport and hotel locations. The persons and businesses renting cars will be both local (State), domestic(US) and international.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.
- Significant effect on housing: None.

#### SMALL BUSINESS DETERMINATION

The Office of Tourism has determined that the proposed regulations will not affect small business because these regulations only affect companies in the passenger car rental industry. There are currently only ten companies involved in this program.

#### ALTERNATIVES CONSIDERED

The Office of Tourism must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose of the proposed action, or be as effective and less burdensome to affected private person than the proposed regulations. The Agency invites interested persons to present statements or arguments concerning alternatives to the proposed regulation during the public comment period.

#### CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

Name: Terri Toohey  
Phone No.: 916-324-3787

The backup contact person for these inquiries is:

Name: Wendy Arzaga-Messersmith  
Phone No.: 916-323-3807

Questions on the substance of the proposed regulations may be directed to Terri Toohey at the above phone number.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the Office may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Agency regarding this proposal, the Office may determine that changes to the proposed regulation are appropriate. If the Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. The Office will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Terri Toohey at the above address. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS

The Office has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Office of Tourism, 980 9<sup>th</sup> Street, Suite 480, Sacramento, CA, during normal business working hours (9 am-5 pm). Please contact Terri Toohey at the above address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Office Contact Person designated in this Notice.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The Office is required to prepare a Final Statement of Reasons. Once the Office has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Office Contact Person identified in this Notice.

## OFFICE INTERNET WEBSITE

The Office maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: [www.visitcalifornia.com](http://www.visitcalifornia.com)

## TITLES 13 AND 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE STATEWIDE PORTABLE EQUIPMENT REGISTRATION PROGRAM (PERP) REGULATION AND THE AIRBORNE TOXIC CONTROL MEASURE (ATCM) FOR DIESEL-FUELED PORTABLE ENGINES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Statewide Portable Equipment Registration Program (Statewide PERP) Regulation and the Airborne Toxic Control Measure for diesel-fueled portable engines (Portable Engine ATCM).

DATE: March 22, 2007

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., March 22, 2007, and may continue at 8:30 a.m., March 23, 2007. This item may not be considered until March 23, 2007. Please consult the agenda for the meeting, which will be available at least ten days before March 22, 2007, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

## INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed amendments to title 13, California Code of Regulations (CCR), sections 2451, 2452, 2456, 2458, 2459, 2460, 2461, and 2462, which govern the Statewide Portable Equipment Registration Program. Proposed amendments to title 17, CCR, sections 93116.1, 93116.2 and 93116.3 and adoption of section 93116.3.1 which constitute the Airborne Toxic Control Measure for diesel-fueled portable engines.

### **Background**

The Board adopted the Portable Engine ATCM in February 2004. Portable engines include a wide variety of engine types and uses. A portable engine may provide primary power to a piece of equipment or it may serve as an auxiliary engine.

The Legislature passed the portable equipment registration statutes in 1995. These statutes (Health and Safety Code §§41750 et seq.) required ARB to create and maintain a program for the registration of engines and equipment that are operated at more than one location throughout the State. Per these 1995 statutes, the Board adopted a regulation establishing Statewide PERP on March 27, 1997, and it became effective on September 17, 1997. The Board has since approved amendments to the Statewide PERP Regulation on December 11, 1998, February 26, 2004, and June 22, 2006. When an engine is registered in PERP, State law provides that the owner of that engine need not obtain local air district permits prior to operating. To be registered in PERP, however, the engine being registered must meet the most stringent emissions standards in effect at the time of application.

Most of the engines associated with portable equipment are diesel-fueled, making these engines also subject to the requirements of the Portable Engine ATCM. The Portable Engine ATCM covers all portable engines, not only those registered in PERP.

At its September 2006 meeting, the Board received public testimony concerning the inability to register older engines in the PERP. After January 1, 2006, the Statewide PERP Regulation only allowed registration of engines that met the current nonroad emission standards in effect at the time of application submittal. In



response to the testimony, the Board directed staff to consider options and report back to the Board.

ARB staff, in consultation with affected industry and the local air districts, developed proposed emergency amendments to the Statewide PERP Regulation and the Portable Engine ATCM. The Board approved the emergency amendments at its December 7, 2006 public hearing, and they were approved by the Office of Administrative Law (OAL) on December 27, 2006. These emergency amendments have been filed with the Secretary of State and will be effective for a period not to exceed 120 days.

On March 22, 2007, staff will present to the Board amendments to the Statewide PERP Regulation and the Portable Engine ATCM. These proposed amendments would make permanent the emergency regulatory changes to Statewide PERP Regulation and the Portable Engine ATCM adopted by the Board on December 7, 2006. ARB staff is also proposing some minor revisions that are intended to provide additional clarity and expediency to the implementation of the Statewide PERP Regulation.

### **Description of the Proposed Regulatory Action**

The following amendments are proposed in order to allow registration of certain engines that would not otherwise qualify. They would also provide regulatory relief for affected industry relative to the availability, sale, purchase, and registration of complying engines.

#### Statewide PERP Regulation

##### *Resident Engines*

ARB staff proposes a redefinition of what constitutes a resident engine in the Statewide PERP Regulation to include those Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality.

##### *Tier 1 and Tier 2 Engines*

The proposed amendments would allow the registration in PERP of "resident" Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. After January 1, 2010, only the cleanest tier available will be allowed to register.

##### *Recordkeeping and Reporting*

ARB staff proposes the removal of the hour meter requirement for rental equipment units. These rental equipment units are already required to track daily throughput, which is adequate for determining compliance with daily emission limitations. The tracking of hours of operation for these units is redundant and places an undue burden on industry.

##### *Registration Fees*

ARB staff proposes a requirement for collecting back registration and inspection fees for these Tier 1 and Tier 2 engines that do not meet the current nonroad emission standard in effect. The proposed fee schedule would favor owners and operators that act early. Fees would be collected from either the year of purchase, or the model year of the engine. Fees would be higher for those owners or operators of Tier 1 engines if a Tier 2 standard was in effect at the time of purchase. The bulk of these back fees will be redirected to the districts for compliance programs. Under the proposal, in addition to having to pay back fees, the owner or operator would also have to pay current registration fees that would be due.

##### *Miscellaneous Amendments*

The staff is proposing to delete the requirement that placards be placed on military tactical support equipment (TSE). The placard requirement was added for all registered portable engines as part of the June 2006 amendments. However, the staff has determined that placards on military TSE are not effective given how this equipment is registered. In addition, ARB staff is proposing the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the Statewide PERP Regulation.

#### Portable Engine ATCM

##### *Tier 0 Engines*

Tier 0 engines are those that are not certified to a California or federal nonroad emission standard. The proposed amendments to the Portable Engine ATCM would allow local air districts to permit Tier 0 engines at their discretion.

##### *Tier 1 and Tier 2 Engines*

The Portable Engine ATCM would only allow the permitting by the local air districts or registration in PERP of Tier 1 and 2 engines that had been operating in California between March 1, 2004 and October 1, 2006. This revised definition will prevent the importation from out of State of Tier 1 or 2 engines, which would negatively affect California's ambient air quality. After January 1, 2010, only the cleanest tier available will be allowed to register or seek local air district permitting, as is required by the existing Portable Engine ATCM.

##### *Compliance Flexibility*

ARB staff proposes provisions in the Portable Engine ATCM that would provide compliance flexibility during those periods where it can be verified to a local air district or ARB's Executive Officer that compliant engines are not sufficiently available.

### *Miscellaneous Amendments*

ARB staff is proposing the modification, addition, and deletion of terms in the definitions section, deletion of outdated provisions, and minor clarifications where needed. These changes are considered to be non-substantive and are intended to provide additional clarity and expediency to the Portable Engine ATCM.

### COMPARABLE FEDERAL REGULATIONS

In section 213 of the federal Clean Air Act, Congress directed the Administrator of the United States Environmental Protection Agency (U.S. EPA) to determine whether emissions from nonroad engines cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and safety, and if so, promulgate emission standards for the control of such engines. Engines used in portable equipment are a general category of nonroad engines. To date, U.S. EPA has adopted emission standards for new spark-ignition nonroad engines at or below 19 kilowatts (25 horsepower) and compression-ignition nonroad engines at or above 37 kilowatts (50 horsepower). Concurrent with authorizing U.S. EPA to adopt emission standards and other regulations for nonroad engines, Congress established a nonroad engine preemption prohibiting all states, including California, from adopting emission standards and other requirements related to the control of emissions from new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles.

In contrast to other states, however, the Clean Air Act permits California to request authorization from the U.S. EPA to adopt and enforce necessary emission standards and regulations for California for all nonroad engines not otherwise expressly preempted. To date, California has adopted several nonroad engine regulations, including emission standards for new spark-ignition engines at or below 19 kilowatts (25 horsepower) and compression-ignition engines at or above 37 kilowatts (50 horsepower). Both regulations have received authorization from the U.S. EPA. The Statewide Regulation promotes consistency between the California and federal requirements and does not establish direct emission standards or other emission related requirements (not including in-use operational controls) for engines that are expressly preempted under Clean Air Act section 209(e)(1).

### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report which contains the Initial Statement of Reasons (ISOR) for the pro-

posed regulatory action, including a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the Statewide Portable Equipment Registration Program and the Air Toxic Control Measure for Diesel-Fueled Portable Engines. Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 "I" Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on March 22, 2007.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified in this notice, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Michael Guzzetta, Manager of the Rule Evaluation Section at (916) 322-6025, or by email at [mguzzett@arb.ca.gov](mailto:mguzzett@arb.ca.gov), or Joseph Gormley, Air Resources Engineer, Rule Evaluation Section, at (916) 322-5616, or by email at [jgormley@arb.ca.gov](mailto:jgormley@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Alexa Malik, Regulations Coordinator at (916) 322-4011, or Amy Whiting, Regulations Coordinator at (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2007/perp07/perp07.htm>.

### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will create costs or savings to state agencies but not in federal funding to the state, costs or mandate to local agen-



cies and school districts whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, and title 2 of the Government Code, and other nondiscretionary cost or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The costs are from the collection of back registration and inspection fees that a private business or a local agency would have had to pay had been registered upon the operational startup of the engine. ARB staff estimates that the total economic impact of the proposed amendments to the Statewide Regulation to affected private businesses and public (local, State, and federal) agencies is \$6.6 million (6.1 million private and 0.5 public) over the next three years. The costs are due to the collection of back registration fees that the businesses would have had to pay had they properly registered the engine upon initial start up.

Staff estimates that 6 State agencies will be affected by the proposed amendments. The total economic cost for State agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$93,000.

Staff estimates that 8 federal agencies will be affected by the proposed amendments. The total economic cost for federal agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$42,000.

The alternative to paying these back fees is to replace the engine with a new engine that meets the current emission standards. The cost savings of these engines being registered instead of being replaced is significant. The average cost of a new engine is approximately \$25,000 (based on an estimated average size of 140 bhp). An estimated 10,000 older engines are expected to register in PERP over the next three years. Therefore, the cost to private businesses and public agencies to replace these engines could have been as high as \$250 million dollars. Consequently, the proposed action will result in substantially lower overall costs to businesses and public agencies.

Staff estimates that about 107 local agencies will be affected by the proposed amendments. The total economic cost for local agencies to comply with the proposed amendments to the Statewide PERP Regulation is estimated by ARB staff to be \$450,000.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The proposed amendments to the Statewide PERP Regulation will continue to have a beneficial effect on the California business climate by allowing for the continued operation of some small businesses.

Before taking final action on the proposed regulatory changes, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the amendment is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, March 21, 2007**, and addressed to the following:

Postal mail: Clerk of the Board  
Air Resources Board  
1001 "I" Street, 23rd Floor  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests, but does not require that **30 copies** of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have

time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under that authority granted in sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41753, 41754, 41755, 43013, and 43018 of the Health and Safety Code. This regulatory action is proposed to implement, interpret, and make specific sections 39650, 39666, 41750, 41751, 41752, 41753, 41754 and 41755 of the Health and Safety Code.

#### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 "I" Street, Visitors and Environmental Center, First Floor, Sacramento, California 95814, (916) 322-2990.

### **TITLE 14. STATE MINING AND GEOLOGY BOARD**

#### **NOTICE OF PROPOSED RULEMAKING**

##### **BOARD ADMINISTRATION FEE**

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) proposes to amend the regulation described below after considering all comments and recommendations regarding the proposed action.

#### **REGULATORY ACTION**

The SMGB proposes to amend § 3696.5 to the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1. The amended regulation adjusts and makes specific the administration fee imposed upon each mining operation to cover the reasonable costs incurred by the SMGB when acting as lead agency in implementing the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.) and Chapter 2 of the Public Resources Code (PRC) as provided for in statute (PRC § 2207[e]).

#### **PUBLIC HEARINGS AND WRITTEN COMMENTS**

The SMGB has not scheduled a public hearing on this proposed action; however, the SMGB will hold a hearing to receive comments if it receives a written request for a public hearing from any interested person, or his/her authorized representative, no later than 15 days before the close of the written comment period. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

Any interested person may submit written comments relevant to the proposed regulatory action to the SMGB. The Written Comment Period closes at 4:00 P.M., March 19, 2007. The SMGB will consider only relevant comments received at the SMGB office by that time. Late submittals will not be considered.

#### **AUTHORITY AND REFERENCE**

The SMGB proposes to adopt a regulation that amends §3696.5 to Article 8 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC §2207(e) and PRC §2755. Reference: PRC §2207(e) and PRC §2755.

#### **INFORMATIVE DIGEST**

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code § 2710 et seq.) was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies (cities and counties) for approval, a plan for reclaiming mined lands as well as

proof of financial assurances to ensure those mined lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit and reclamation requirements. The Department of Conservation (Department) and the State Mining and Geology Board (SMGB) provide SMARA lead agency assistance and oversight.

SMARA is a State law that is designed to be implemented primarily by local lead agencies. A lead agency is defined in PRC §2200.5 (Chapter 2) and PRC §2728 (Chapter 9) as a city, county, the State Mining and Geology Board (SMGB), and the San Francisco Bay Conservation and Development Commission. To prevent SMARA, and Chapter 2 of the Public Resources Code, from being unfunded State mandated programs, a lead agency is provided authority to impose a fee upon each mining operation within its jurisdiction to cover the reasonable costs incurred in implementing Chapter 2, commencing with PRC §2200, and Chapter 9 (SMARA), commencing with PRC §2710.

Throughout the State, lead agencies have established in their local ordinances schedules of specific fees to cover the cost of performing a lead agency service that is related to the running of the lead agency's SMARA program. These services related fees are imposed on each surface mining operation. The nature of a fee varies from a flat fee per specific service, or an hourly-rate fee to perform a service, to a combination of flat fee plus hourly-rate fee. There are 84 cities and 57 counties that are SMARA lead agencies (141 SMARA lead agencies in the State). Not all agencies have fees for the same services.

SMARA provides for, in some instances, the SMGB to assume the role of lead agency for the administration of the Act when a local lead agency is not able to perform that role (ref. PRC §2774.4, §2774.5). PRC §2207(e) specifically provides for the SMGB to impose a fee upon each mining operation to cover its reasonable costs in implementing Chapter 2 and Chapter 9 of the Public Resources Code when the SMGB is acting in the capacity of SMARA lead agency. Since 1998, the SMGB has assumed the role of SMARA lead agency 49 times. Currently, the SMGB is the SMARA lead agency for two counties and 6 cities, and 11 dredging operations in the San Francisco Bay area, encompassing 47 mines.

Since 1998, the SMGB has not found it necessary to impose an administration fee on those mines within the SMGB's SMARA lead agency jurisdictions to cover the costs of administering the Act. Funds adequate to cover the SMGB's operating costs were derived solely from the Surface Mining and Reclamation Account (SMRA) in the General Fund. This Account received its money from Federal royalty payments to the State un-

der the Mineral Lands Leasing Act. Money from this Account, also, was used to pay for the Department of Conservation's SMARA mineral programs managed by the California Geological Survey (Division of Mines and Geology) and the Office of Mine Reclamation.

The SMGB is authorized, also, to receive operating funds from the Mine Reclamation Account (MRA), which derives its moneys from the annual reporting fees collected by the Department of Conservation (DOC) each year, as well as moneys collected by the DOC or the SMGB for SMARA related actions such as the imposition of penalties on mine operators, service fees, or interest on accounts (PRC §2207(d)(4)(A)). The SMGB has never accepted funding from the MRA account to avoid the appearance of a conflict of interest, since the SMGB establishes the annual reporting fee schedule as well as assesses penalties on mine operators for violations of SMARA.

Recently, funding to the DOC and the SMGB from the Surface Mining and Reclamation Account has been significantly curtailed by approximately 45 percent, principally because of the effects of statutory triggers that resulted from the sale of Federal petroleum producing properties to private companies, thereby reducing royalty money going into the SMRA. No substitute funding source has been approved.

Since January 1, 1991, the SMGB has had statutory authority to assume the SMARA powers of a local lead agency; however, until 1998 the SMGB had not done so. About that time, the SMGB commenced actively enforcing SMARA's requirement that local lead agencies possess SMARA-compliant mining ordinances. Unless a city or county had a SMGB-certified mining ordinance in accordance with current SMARA, that city or county could not serve as an administrator of SMARA. Beginning in 1998, the SMGB's activities became more focused on the performances of lead agencies in their administration of the Act.

Between 1998 and 2004, the SMGB has considered actions on 903 staff reports brought before it (approximately 129 reports per year) of which 323 reports were related directly to the SMGB acting in the capacity as a SMARA lead agency (approximately 39 percent of reports). However, since 2004, about 52 to 60 percent of the SMGB's actions on staff reports were directly related to its SMARA lead agency responsibilities (248 staff reports with 136 reports directly related to SMARA lead agency obligations, and currently approximately 144 reports per year). Since 2004 when the administrative fee was initially implemented, the use of SMGB resources for SMARA lead agency activities has steadily increased.

The SMGB's role as a SMARA lead agency, also, has resulted in substantial increases in overhead costs for record-keeping and file maintenance. At present,



approximately 36 percent of the SMGB's active filing system is devoted to lead agencies and mines within those agencies over which the SMGB has SMARA jurisdiction. With time, these file records will continue to grow and consume additional space and maintenance, even if no additional lead agency assumptions are enacted by the SMGB. There has, likewise, been a significant increase in staff time required to maintain and process the necessary billing, accounting, document retrieval, reproduction and storage, correspondence, mailing, etc., associated with lead agency activities. In the last several years, virtually all of the SMGB's involvement in lawsuits has been directly related to its actions as a SMARA lead agency. This has resulted in additional legal expenses for the SMGB to prosecute these cases.

With reductions in its base funding from the SMRA, the SMGB is no longer able to absorb all of the overhead costs for its activities as a SMARA lead agency, and must turn to funding from another authorized source. This source is provided in PRC §2207(e).

City and County SMARA lead agencies charge a variety of fees to fund the cost of implementing Chapter 2 and Chapter 9 (SMARA). In mid-January, 2004, the SMGB commenced a statewide survey of SMARA lead agencies to ascertain the types and amounts of fees charged to surface mine operators by these lead agencies for the administration of their SMARA programs. Although the response was not large, it appears to represent a valid spectrum of SMARA lead agencies (responding: 6 cities [7%] and 27 counties [47%]).

Almost all lead agencies charge a combination fee for a particular service; that is: (1) a basic flat fee that covers minimum time for a service, and then a cost per hour rate for time in excess of the basic flat fee; or (2) the actual cost to produce a report or permit charged by a consultant, plus an hourly rate to cover the lead agency's staff time to process the report or permit. Lead agency hourly staff rates averaged \$76 (ranged from \$30 to \$112 per hour).

PRC§2207(e) provides for the SMGB to impose "a fee" on a surface mine operator under the SMGB's SMARA jurisdiction. The SMGB interprets this to mean a single fee, rather than a schedule of fees that range over a variety of services. There are two main types of single fees that may be considered: (1) a flat fee per mine per year, and, (2) an hourly-rate fee for staff time and materials devoted to each mine.

For simplicity of calculation and budgeting for both mine operations and the SMGB, the SMGB recommends that a flat fee be imposed. The flat fee method recommended is a service fee per day in which a mine is under SMGB jurisdiction. The basis for the flat fee is the total hourly resource cost required to operate the SMGB of \$184, times the average hours spent on each

mine per year (25.68 hours). This flat fee would calculate to be approximately \$4,725, or \$12.95 per day. Thus, the SMGB recommends that this flat fee be set at \$14.00 per day (rounded to nearest dollar) per mine for each day the mine is subject to the SMGB's SMARA jurisdiction.

## POLICY STATEMENT OVERVIEW

The proposed language in the regulation clarifies and makes specific the adjusted administration fees to be imposed upon each mining operation to cover the reasonable costs incurred by the SMGB when acting as lead agency in implementing the Surface Mining and Reclamation Act (SMARA, Public Resources Code § 2710 et seq.) and Chapter 2 of the Public Resources Code (PRC) as provided for in statute (PRC § 2207[e]). This regulation is necessary in order to protect the California public and environment by providing funds to the SMGB to operate its programs mandated by SMARA when the SMGB is the operating lead agency. Specifically, this regulation addresses PRC § 2207(e).

## CEQA COMPLIANCE

The SMGB staff have determined that this rule making project is either not a project under Title 14, CCR § 15378 of the CEQA Guidelines, or is Categorically Exempt under Title 14, CCR § 15308 of the CEQA Guidelines.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB staff has made the following preliminary determinations:

### **Mandate on local agencies and school districts:**

The SMGB staff determined that adoption of this regulation does not impose any new mandates on local agencies or on local school districts.

**Costs or savings to any State agency:** The SMGB staff determined that this proposed regulation imposes no savings or additional expenses to state agencies.

### **Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630:**

The SMGB staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

### **Other non-discretionary costs or savings imposed upon local agencies:**

The SMGB staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

**Cost or savings in Federal funding to the State:**

The SMGB staff determined that there are no costs or savings in Federal funding to the State.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:**

SMGB staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language.

**Potential cost impact on private persons or directly affected businesses:**

The SMGB staff has determined that the imposition of the proposed administration fee on a directly affected local mining operation may have a small cost impact to that operation; however, the cost impact may be wholly or partially offset by a reduction of local SMARA program fees charged to the mine by the local lead agency since the local lead agency no longer is implementing its SMARA program.

**Creation or elimination of jobs in California:**

The SMGB staff has determined that the adoption of these regulations will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

**Significant effect on housing costs:** The SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Effects on small businesses:** The SMGB staff has determined that the imposition of the proposed administration fee on a local mining operation (which may meet the criteria for a “small business”) may have a small cost impact to that operation; however, the cost impact may be wholly or partially offset by a reduction of local SMARA program fees charged to the mine by the local lead agency since the local lead agency no longer is implementing its SMARA program. That is, some or all of the SMARA administration fee formerly paid to the local lead agency would now be paid to the SMGB to run the local program until the local agency comes into compliance with SMARA.

## CONSIDERATION OF ALTERNATIVES

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the

action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. SMGB staff has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

An interested person may request a copy of the proposed regulation and the Initial Statement of Reasons, or direct questions about the proposed regulation and Initial Statement of Reasons and inspect all supplemental information, upon which the regulation is based, contained in the rulemaking file. The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 A.M. and 4:00 P.M., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB’s Internet Web Site at: <http://www.conservation.ca.gov/smgb>

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public comment period, the SMGB may adopt, as final, the proposed regulation substantially as described in this Notice and Informative Digest. Copies of the regulation, as finally adopted, will be sent to all persons on the SMGB’s public comment mailing list for this issue and others requesting copies. If, as a result of public comment, substantive changes to the regulation are deemed appropriate, copies of the proposed changes will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those who have requested copies of information regarding the regulation. The modified text will be available to the public for at least 15 days before the SMGB adopts the regulation as revised. The SMGB will accept written comments for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulation will appear in CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 8, §3696.5. A copy of the Final Statement of Reasons may be obtained by contacting the SMGB office as described under the section Contact Person.

## CONFLICT WITH FEDERAL REGULATIONS

This regulation does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the State Mining and Geology Board, SMARA and federal law are coordinated to eliminate duplication.

## CONTACT PERSON

Inquiries concerning the substance of the adopted regulation should be directed to:

Mr. Stephen M. Testa, Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814

## TITLE 18. STATE BOARD OF EQUALIZATION

### Notice Is Hereby Given

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation 1603, *Taxable Sales of Food Products* in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 20, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received March 20, 2007.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law: Revenue and Taxation Code (RTC) section 6011, subdivision (b)(1) and section 6012, subdivision (b)(1) provide that the total amount of the sale price of tangible personal property includes any services that are part of the sale. Regulation 1603, *Taxable Sales of Food Products*, subdivision (g) provides that amounts designated as service charges added to the price of meals are part of the selling price of meals and accordingly must be included in the retailer's gross receipts subject to tax even though such service charges are

made in lieu of tips and are paid over by the retailer to employees.

Proposed Regulation 1603 is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 6011 and 6012. The regulation proposed by Staff recommends that subdivision (g) of Regulation 1603 be expanded to clarify the current application of tax, as follows:

- An amount, whether designated as a tip, gratuity, or service charge, is optional and not subject to tax when it is added to the bill by the customer or otherwise left by the customer in payment over and above the actual amount due the retailer.
- An amount, whether designated as a tip, gratuity, or service charge, is presumed to be mandatory and subject to tax when added to the bill by the retailer. Amounts negotiated between the retailer and the customer in advance of a meal or events are mandatory. A statement printed on a menu, advertisement or a brochure advising the customer that a tip, gratuity, or service charge will or may be added to the bill when a group of people exceeds a specified number is evidence that the charge is mandatory and part of the gross receipts from the sale of the meal, food, or drinks. As such, it is subject to tax.

Subdivision (g) would also incorporate and replace the provisions of current subdivision (h)(3)(E) to further clarify that the above provisions apply to retailers selling food and beverages, including restaurants, hotels, caterers, boarding houses, soda fountains, drive-ins, and similar establishments.

### Cost To Local Agencies And School Districts

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### Effect On Business

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization made an initial determination that the adoption of Regulation 1671.1 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor



result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

#### **Cost Impact On Private Person Or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **Significant Effect On Housing Costs**

No significant effect.

#### **Federal Regulations**

Proposed Regulation 1603 has no comparable federal regulations.

#### **Authority**

Section 7051 Revenue and Taxation Code.

#### **Reference**

Sections 6011 and 6012 Revenue and Taxation Code.

#### **Contact**

Questions regarding the substance of the proposed regulation should be directed to Mr. Cary Huxsoll, Tax Counsel, telephone (916) 324-2641, e-mail [Cary.Huxsoll@boe.ca.gov](mailto:Cary.Huxsoll@boe.ca.gov), or by mail at State Board of Equalization, Attn: Cary Huxsol, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [diane.olson@boe.ca.gov](mailto:diane.olson@boe.ca.gov), or by mail at State Board of Equalization, Attn: Diane Olson, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

#### **Alternatives Considered**

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

#### **Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation**

The Board has prepared a statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are

available on the internet at the Board's website <http://www.boe.ca.gov>.

#### **Additional Comments**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

#### **Availability Of Final Statement Of Reasons**

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed regulation. It will also be available for your inspection at 450 N Street, Sacramento, California.

## **TITLE 24. BUILDING STANDARDS COMMISSION**

### **NOTICE OF PROPOSED ACTION TO BUILDING STANDARDS OF THE OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

### **REGARDING THE CALIFORNIA MECHANICAL CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 4**

#### **Health Facilities Construction—Air Circulation**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Office of Statewide Health Planning and Development (OSHDP) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 4. The OSHPD is proposing building standards related to air circulation in toilet rooms of hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers.

## PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from February 2, 2007 until 5:00 PM on March 19, 2007. Please address your comments to:

California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Attention: Dave Walls, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to [CBSC@dgs.ca.gov](mailto:CBSC@dgs.ca.gov).

Pursuant to Government Code Section 11346.5 (a) 17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

## POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

## AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Sections 18949.3 and 130021.5 (a). The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Section 130021.5 (a). The OSHPD is proposing this regulatory action based on Health and Safety Code Section 130021.5 (a).

## INFORMATIVE DIGEST

### Summary of Existing Laws

Health and Safety Code Section 1226 authorizes OSHPD to prescribe, in consultation with the Commu-

nity Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.

Health and Safety Code Section 1275 authorizes OSHPD to adopt and enforce building standards for the physical plant of hospitals, skilled nursing facilities and correctional treatment centers.

Health and Safety Code Section 130021.5(a), enacted by SB 1659 (Chapter 678, Statutes of 2006), mandates that OSHPD propose amendments to the California Mechanical Code (CMC) that will facilitate the construction of toilet rooms which are accessible to persons with disabilities in hospitals and skilled nursing facilities. The California Building Standards Commission must deem the regulations as emergency regulations and adopt them as such. This statute is effective January 1, 2007, and will be repealed on January 1, 2008.

### Summary of Existing Regulations

Currently, the 2001 CMC Section 407.4.1.3 prohibits the use of corridors to convey supply, return or exhaust air to or from any room of a hospital, skilled nursing facility, licensed clinic or correctional treatment center. There is an exception to this requirement which does allow air from corridors to serve small rooms less than 30 square feet that are mechanically exhausted with access directly to a corridor. These small rooms are identified as toilet rooms, bathrooms, and janitor's closet. Additionally, the current requirements of 2001 CMC Section 602, Exception 1 repeat the current requirements of CMC Section 407.4.1.3.

### Summary of Effect

The proposed regulations will amend 2001 CMC Section 407.4.1.3 to specify that corridors that are required to be of fire-resistive construction cannot be used to convey air to or from any room in the health facility. Additionally, Section 407.4.1.3, Exception No.1 is being amended and will allow air from corridors to serve toilet rooms up to 50 square feet and small rooms of 30 square feet or less (janitor's closets, housekeeping rooms, electrical or telephone closets) which are mechanically exhaust and that open directly onto corridors. The current provision allows this for only small rooms up to 30 square feet; however, toilet rooms must be accessible to persons of disabilities are larger than 30 square feet. The amendment will comply with Title 24 accessibility requirements. The ventilation requirements are not being changed.

Amendments to Section 602.1, which were intended to be the same as the requirements in Section 407.4.1.3, are being deleted, and replaced with a reference to Section 407.4.1.3.

The proposed regulations will result in construction cost savings of up to \$2,900 per toilet room and minor savings in annual energy costs.

Comparable Federal Statute or Regulations

There are no federal statutes or regulations that are comparable to these proposed regulations.

Policy Statement Overview

OSHPD is responsible for the development of regulations regarding the physical plant of hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers. The proposed amendments to the CMC will implement the requirements of SB 1659 (Chapter 678, Statute of 2006). This legislation added Health and Safety Code 130021.5 (a) which requires that OSHPD propose regulations to the CMC that will facilitate the construction of toilet rooms that are accessible to persons with disabilities in health facilities.

OTHER MATTERS PRESCRIBED BY STATUTE  
APPLICABLE TO THE AGENCY OR TO ANY  
SPECIFIC REGULATION OR CLASS OF  
REGULATIONS

Pursuant to Health and Safety Code Section 130021.5(a), the proposed regulations are to be deemed as emergency regulations and adopted by the California Building Standards Commission as such.

MANDATE ON LOCAL AGENCIES OR SCHOOL  
DISTRICTS

OSHPD has determined that the proposed regulatory action will not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **Yes**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Yes**
- E. Cost or savings in federal funding to the state: **No**

**Estimate:** The proposed amendment to CMC Section 407.4.1.3 that will permit air from the fire-resistive corridors to serve toilet rooms up to 50 square feet would be a cost savings for hospitals, skilled nursing facilities, licensed clinics and correction treatment cen-

ters. The savings would be up to \$2,900 per toilet room as the initial air duct and outlet material, fire/smoke damper, installation, air balancing, etc. would not be required pursuant to this amendment. Energy costs would also be reduced on average approximately \$75.00 per year per toilet room.

INITIAL DETERMINATION OF NO  
SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES

The OSHPD has made an initial determination that the adoption/amendment/repeal of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

The OSHPD has not relied on any other facts, evidence, documents, testimony or other evidence to make its initial determination of no statewide adverse economic impact.

FINDING OF NECESSITY FOR THE PUBLIC'S  
HEALTH, SAFETY, OR WELFARE

(Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.)

A report applicable to businesses is not required by these regulations.

COST IMPACT ON REPRESENTATIVE PRIVATE  
PERSON OR BUSINESS

The OSHPD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS  
UPON JOBS AND BUSINESS EXPANSION,  
ELIMINATION OR CREATION

The OSHPD has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California.  
These regulations will have no affect.
- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will have no affect.

- ☐ The expansion of businesses currently doing business with the State of California:

These regulations will have no affect.

#### **INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS**

OSHPD has made a determination that this proposal will not have a significant effect on housing costs.

#### **CONSIDERATION OF ALTERNATIVES**

OSHPD has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF RULEMAKING DOCUMENTS**

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

#### **CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to:

**Thomas Morrison, Deputy Director**  
**2525 Natomas Park Drive, Suite 130**  
**Sacramento, CA 95833**  
**Telephone No.: (916) 263-0916**  
**Facsimile No.: (916) 263-0959**

#### **PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Duane Borba, Supervisor, Health Facilities Review  
Office of Statewide Health Planning and Development  
Facilities Development Division  
1600 Ninth Street, Room 420  
Sacramento, CA 95814

Telephone: (916) 654-3139  
FAX: (916) 653-2973  
E-mail: [regsunit@oshpd.ca.gov](mailto:regsunit@oshpd.ca.gov)

### **TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

#### **NOTICE OF PROPOSED RULEMAKING FOR THE ADOPTION OF HOUSING ELEMENT ANNUAL PROGRESS REPORT REGULATIONS**

Notice is hereby given that the Department of Housing and Community Development (Department) proposes to adopt regulations governing the State Housing Element Annual Progress Report. These regulations implement and interpret subdivision (b) of Government Code Section 65400 which establishes the requirement that each city, county or city and county planning agency prepare an annual report on the status of the housing element of its general plan and progress in its implementation using forms and definitions adopted by the Department.

#### **COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit comments relevant to the proposed regulatory action to the Department. The comment period begins on February 2, 2007 and closes on March 19, 2007 at 5:00 p.m. The Department will consider comments received during this timeframe. The regulations are available at [www.hcd.ca.gov](http://www.hcd.ca.gov). Your comments may be submitted by mail, fax, or e-mail to:



Melinda Coy  
Department of Housing and Community Development — HPD  
1800 3<sup>rd</sup> Street, Suite 430  
Sacramento, CA, 95814  
Phone: (916) 445-4728  
Fax: (916) 327-2643  
e-mail: [mcoy@hcd.ca.gov](mailto:mcoy@hcd.ca.gov).

## PUBLIC HEARING

A public hearing will be held on:

**March 19, 2007 — Sacramento — 10:00am–2:00pm**  
Department of Housing and Community Development  
1800 Third Street, Room 183, Sacramento  
General Contact: (916) 445-4728 (site information only)

Any person may present statements or testimony orally or in writing relevant to the proposed action described in the Informative Digest below. The Department requests, but does not require, persons making oral comments at the hearing also submit a written copy.

## AUTHORITY AND REFERENCE

The Department is conducting this rulemaking activity under the authority provided by Government Code Sections 65400 and Health & Safety Code Section 50439. They implement and make specific subdivision (b)(2) of Government Code Section 65400.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of these proposed regulations is to comply with the statutory mandate of subdivision (b) of Government Code Section 65400 to provide forms and definitions to be used by local governments in the preparation of Annual Progress Reports detailing implementation progress of their housing element. In addition, the proposed regulations provide direction on the contents of the report, consistency and clarity on reporting requirements.

**Section 6200. Purpose and Scope.** This section provides the authority, purpose of the regulation, and the general activities they regulate.

**Section 6201. General.** This section establishes the beginning and ending date of the reporting period and identifies three approaches an agency can take to utilize

the proposed annual form. In addition, only those activities conducted within the jurisdictional boundaries of the reporting locality will be included in the annual report form.

**Section 6202. Definitions.** This section provides the definitions of key terms used throughout the body of the regulations.

**Section 6203. Annual Report Content.** The purpose of this section is to implement and interpret reporting requirements. Each year the local government agency will provide an annual report to the localities legislative body, the Governor's Office of Planning and Research and this Department.

## IMPACT OF PROPOSED REGULATIONS

The purpose of the Housing Element Annual Progress Report is for local government agencies to report implementation progress of the housing element of their general plan as required by Government Code Section 65400.

## EFFECT ON SMALL BUSINESS

The proposed regulations do not affect small businesses, because they do not mandate or require small businesses to take any prescribed action, and have no financial impact on small businesses.

## LOCAL MANDATE

The proposed regulatory activity will not impose a mandate on local agencies or school districts.

## FISCAL IMPACT

This regulatory activity does not impose any cost on local government agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; nor does the regulatory activity result in any other nondiscretionary cost or savings imposed on local government agencies, or State agencies. There are no costs or savings in Federal funding to the State.

## EFFECT ON HOUSING COSTS

The focus of the Housing Element Annual Progress Report regulation is to provide direction on the contents of the report, consistency and clarity on reporting requirements. There will not be any impact on housing costs.

**INITIAL DETERMINATION OF STATEWIDE  
ADVERSE ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESSES**

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT STATEMENT**

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California.

**STATEMENT OF POTENTIAL COSTS IMPACT  
ON PRIVATE PERSONS AND BUSINESS  
DIRECTLY AFFECTED**

The Department is not aware of any cost impacts that a representative, private person or business would necessarily incur in reasonable compliance with the proposed action.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective, and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF TEXT OF PROPOSED  
REGULATIONS AND STATEMENT OF REASONS**

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Melinda Coy at the address and telephone number indicated (see next page). The regulations are also available on the Department's web site at [www.hcd.ca.gov](http://www.hcd.ca.gov).

**AVAILABILITY OF CHANGED OR MODIFIED  
TEXT**

Following the comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are related to the originally proposed text, it will make the text, with changes clearly indicated, available to the public for at least 15 days prior to adoption of the revised regulations. Requests for copies of the modified regulations can be sent to Melinda Coy at the address indicated (see next page). The Department will accept comments for 15 days after the release date of the modified regulations.

**AVAILABILITY OF RULEMAKING  
DOCUMENTS**

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named on the next page.

**AVAILABILITY OF FINAL STATEMENT OF  
REASONS**

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person(s) named on the next page.

**CONTACT INFORMATION**

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the comment period. Direct inquiries concerning the substance of the proposed rulemaking action and any requests for the documents should be made to:

**HCD:** Melinda Coy  
(916) 445-5307  
**Back Up:** Lenora Frazier  
(916) 323-7288

**Address:** Department of Housing and  
Community Development  
Division of Housing Policy  
Development  
1800 Third Street, Room 430  
Sacramento, Ca 95814

**E-mail:** [mcoy@hcd.ca.gov](mailto:mcoy@hcd.ca.gov) — for direct  
inquiries or for copies of the Notice

of Proposed Action, the Initial Statement of Reasons, and the text of the regulations access the Department's website at [www.hcd.ca.gov](http://www.hcd.ca.gov).

**Fax No: (916) 327-2643**

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that it's Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.  
DBA ASI Telesystems, Inc.  
21150 Califa Street  
Woodland Hills, CA 91367

Bay Recycling  
800 77th Avenue  
Oakland, CA 94621

C & C Disposal Service  
P.O. Box 234  
Rocklin, CA 95677

Choi Engineering Corp.  
286 Greenhouse Marketplace, Suite 329  
San Leandro, CA 94579

Fries Landscaping  
25421 Clough  
Escalon, CA 95320

Marinda Moving, Inc.  
8010 Betty Lou Drive  
Sacramento, CA 95828

MI-LOR Corporation  
P.O. Box 60  
Leominster, MA 01453

Peoples Ridesharing  
323 Fremont Street  
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital  
446 26th Street  
San Diego, CA

Southern CA Chemicals  
8851 Dice Road  
Santa Fe Springs, CA 90670

Tanemura and Antle Co.  
1400 Schilling Place  
Salinas, CA 93912

Turtle Building Maintenance Co.  
8132 Darien Circle  
Sacramento, CA 95828

Univ Research Foundation  
8422 La Jolla Shore Dr.  
La Jolla, CA 92037

Vandergoot Equipment Co.  
P.O. Box 925  
Middletown, CA 95461

## DECISION NOT TO PROCEED

### BOARD OF REGISTERED NURSING

#### NOTICE OF DECISION NOT TO PROCEED Pursuant to Government Code section 11347

Pursuant to Government Code Section 11347, the Board of Registered Nursing hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register (CRNR), December 22, 2006 (OAL File No. Z-06-1212-01). The proposed rulemaking concerned amendment to Article 3.5 Citation and Fine, section 1435.2.

However, the Board of Registered Nursing will publish a new notice on the same rulemaking proposal on February 9, 2007, in the CRNR.

Any interested person with questions concerning this rulemaking should contact Alcidia Valim at either (916) 574-7684 or by e-mail at [alcidia\\_valim@dca.ca.gov](mailto:alcidia_valim@dca.ca.gov).

The Department will also publish this Notice of a Decision Not to Proceed on its website.

**RULEMAKING PETITION  
DECISIONS**

**AFFECTED PROVISIONS**

Title 14 CCR Section 3704.1

**STATE MINING AND GEOLOGY  
BOARD**

**REGULATORY AUTHORITY**

**DENIAL OF PETITION  
STATEMENT OF REASONS**

Public Resources Code

Article 4.

State Policy for the Reclamation of Mined Lands  
Section 2755.

Pursuant to Government Code Section 11340.7(a), "Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency."

*"The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."*

**REASONS OF FINDINGS**

Introduction: Kern County (County) is the Surface Mining and Reclamation Act of 1975 (SMARA) lead agency for the Golden Queen Mining Company (Golden Queen), Soledad Mountain Project (CA ID #91-15-0098). On September 7, 2006, the State Mining and Geology Board (SMGB) received a petition from Golden Queen, represented by Mr. James E. Good of the law firm Gresham Savage Nolan & Tilden (Petitioner), petitioning the SMGB to consider an amendment to the SMGB's backfilling regulations Title 14, Article 9, California Code of Regulations (CCR) 3704.1, pertaining to Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals, and as it applies to the Golden Queen Mining Company's Soledad Mountain Project. Specifically, the petitioner requested that they be exempted from the requirement of backfilling. The petition met the criteria set forth pursuant to APA Section 11430.6. On October 27, 2006, Golden Queen amended its petition "to adopt the proposed amendment to subsection (i) of 14 CCR 3704.1 advocated by Kern County."

At its December 14, 2006, regular business meeting, the SMGB denied the petition. At such time, the SMGB requested that a "Final Statement of Reasons" for denial of the petition for rulemaking be prepared, pursuant to the Government Code Section 11340.7.

Regulatory Authority: Government Code Section 11340.7 provides procedures to be followed when a petition is denied. Government Code Section 11340.7(d) states:

**AGENCY**

STATE MINING AND GEOLOGY BOARD

**PETITIONER**

Mr. James Good  
Gresham Savage Nolan & Tilden  
550 East Hospitality Lane, Suite 300  
San Bernardino, California 92408-4205  
Phone: (909) 884-4499  
Fax: (909) 890-2511

**AND**

Mr. Jim Ellis, AICP  
Operations Division Chief  
Kern County Planning Department  
2700 "M" Street, Suite 100  
Bakersfield, California 93301-2323  
Phone: (661) 862-8600  
Fax: (661) 862-8601



*“Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The Decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.”*

**Considerations and Findings Presented to the SMGB:**

As expressed in the Executive Officer’s report prepared for the December 14, 2006, regular business meeting, and as presented in testimony at that meeting, the following information was offered for the Board’s consideration:

**Legacy of Open-Pit Metallic Mining:** Open pit metallic mineral mines often create very large excavations with at least equally large overburden and rock waste piles. Material “swelling” may create overburden and rock waste piles having greater volumes than the pit from which the material was excavated. Industry statements provide that swelling by as much as 40 percent occurs. In addition, metallic mineral mines that employ the cyanide heap leach method for mineral segregation and collection frequently generate very large leach piles. These features remain on the landscape following the conclusion of mining operations, and may pose a contamination problem when residual cyanide (or any other processing solution) not removed by rinsing is exposed to precipitation percolating through the pile and flushing the processing solution into surface waters. SMARA requires that upon the termination of surface mining operations, lands affected by the mining operations shall be, “reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety.” Often, open-pit metallic surface mines with reclamation plans approved by their lead agencies did not require the backfilling of the excavation or the recontouring of affected mined lands, thereby leaving large, unfilled pits and mounds of overburden or mine-waste rock material on the surrounding landscape. Often, too, the end use to which the site was to be readily adaptable was given as an

undefined “open space”. Where open pit excavations remain on the landscape, it often is difficult to envision how the remaining open pit is readily adaptable for a beneficial alternate use, or how the “open space” itself is usable.

**Goal of the SMGB’s Backfilling Regulations:** The goal of the SMGB regulations was to require mining companies to address the problems identified above and to take responsibility for cleaning up their mine sites after the completion of surface mining operations, and return them to a condition that allows alternative uses and avoids environmental harms, thereby meeting the purpose and intent of SMARA. SMGB regulations, which took effect in 1993, establish performance standards for reclamation pursuant to SMARA, including standards for backfilling (14 CCR Section 3704). The standards provide that, where backfilling is required for resource conservation purposes, fill material must be backfilled “to the standards required for the resource conservation use involved” (14 CCR Section 3704(b)). *New section 3704.1 of the regulations merely ‘clarifies and makes specific the conditions under which the backfilling of open pit excavations for metallic surface mines must be undertaken’ to meet SMARA reclamation requirements.”* (see the Final Statement of Reasons for 14 CCR Section 3704.1, page 1). CCR Section 3704.1 also contains a grandfather provision, which exempts from this section any surface mining operation “for which the lead agency has issued final approval of a reclamation plan and a financial assurance prior to December 18, 2002.” (14 CCR Section 3701.4(i).)

**Extended Legacy:** As stated in the Final Statement of Reasons for 14 CCR Section 3704.1 (pages 1–2) “In summary, leaving large, open pits in the surface surrounded by millions of cubic yards of waste rock does not leave the site in a useful condition, and clearly leaves the site in a less useful and beneficial condition than before it was mined . . . [I]t is the intent of SMARA that completed mine sites present no additional dangers to the public health and safety... and that the mined lands are returned to an alternate, useful condition. To date, no large, open pit metallic mines in California have been returned to the conditions contemplated by SMARA, and these sites remain demonstrably dangerous to both human and animal health and safety.”

**Slippery Slope and Unintended Consequences:** To change the backfilling regulation at this juncture,

to accommodate any particular operations, could open opportunities for similar requests. At the June 8, 2006, SMGB Policy and Legislation Committee meeting, Chairman Jones inquired about other operators that could potentially take advantage of this exemption language. The issue may not so much be who else might benefit from this particular change but instead who might seek further regulatory change so that they might also avoid coming under this requirement, or some other SMGB regulation that is believed to be onerous or unfair. Even if one could ignore Golden Queen's history of SMARA violations at the Soledad Mountain site, one should not ignore the larger policy implications and potential "snowballing effect" associated with eroding the regulation's environmental protections in this instance to meet the particular circumstances or desires of one operator. Others could well be waiting to take advantage.

Undermining of Backfilling Regulation: To change the backfilling regulation at this juncture, to accommodate any particular operations, would undermine the intent of the regulation and would not serve the purpose of SMARA's reclamation requirements, that is, to reclaim mined lands so that they are left in a useful, beneficial condition and so that they present no additional dangers to the public health and safety. As clearly illustrated by OMR's presentation to the SMGB at its December 14, 2006, regular business meeting, no open-pit, metallic mines in California have been returned to the conditions contemplated by SMARA, and these sites remain demonstrably dangerous to both human and animal health and safety.

Golden Queen Violations of SMARA: Contrary to Golden Queen's representations, Golden Queen violated SMARA prior to December 18, 2002. Mr. Good, representing Golden Queen, testified to the SMGB that operations had not started at the Soledad Mountain site before the December 18, 2002, date contained in the SMGB's backfilling regulations, and therefore, Golden Queen had no need for a financial assurance before that date. However, contrary to Mr. Good's assertions, exploration and development work, as well as material extraction by a third party, had been performed and completed resulting in about 21 acres of disturbed land, prior to December 18, 2002. In fact, Golden Queen itself reported 21 acres of disturbed land in its 2002 annual mining report. SMARA requires that an approved reclamation plan and financial assurance be in

place before such activities take place. Golden Queen did not have an approved financial assurance for the Soledad Mountain site until December 2005. Golden Queen's violations of SMARA related to the activities were noted in OMR correspondence to Kern County dated January 15, 2005, and January 5, 2006. The violations were also documented by Kern County itself in a 2003 mining inspection report.

No Exemption from the Backfilling Regulation. Section 3704.1 provides that open-pit metallic mining operations with approved reclamation plans and financial assurances are exempt from the backfilling requirement. There was ample opportunity for Golden Queen to seek changes to the proposed language for Section 3704.1 before the regulation's adoption by the SMGB, but it did not. Golden Queen also had ample opportunity to secure an approved financial assurance before acreage at the Soledad Mountain site was disturbed, but it did not.

Type of Surface Mining Operation: The planned activity was deemed an open-pit mining operation, and not as characterized by Golden Queen and the County as a sidehill operation. Regardless, a sidehill operation does not constitute exemption from the SMGB's backfilling regulations since a sidehill operation can be inferred to be a form of opencut, opencast, or open-pit operation.

Statement of Reasons for Denial of Petition: The SMGB denied the petition for rulemaking set forth by Golden Queen and Kern County at its December 14, 2006, regular business meeting. This action was taken after the SMGB considered the information and findings set forth in the Executive Officer's report for December 14, 2006, and testimony presented to the SMGB, as summarized above. The reasons stated by the Board at the December 14, 2006 meeting in denying the petition are summarized below:

Finding No. 1: The SMGB strongly reiterated that the SMGB's backfilling regulations were of significant environmental importance that corrected the common past mining practice of leaving large steep-walled open-pits, and expansive waste and leach piles, which remained as public eyesores and safety hazards. Without backfilling a permanent scar is left on the community and the land for decades or longer. Granting an exemption to the backfilling regulation, or changing the regulation so that one or more additional mines would be exempt from the backfilling requirement, would extend the negative legacy of essentially un-reclaimed

open-pit metallic mines. This would not be consistent with legislative intent, environmental consciousness, or sound public policy.

Finding No. 2: The SMGB expressed concern that it has been only two-to three-years since the SMGB's backfilling regulation became effective, and already an exemption was being requested to change the effective starting date. The petitioner had abundant opportunity to comply with the SMARA or present its arguments at the time the backfilling regulation was initially under consideration. Significant time and effort was invested by the SMGB in initial consideration of the backfill regulation, including a substantial discussion about the effective application date of such regulation. The justification provided by Golden Queen, in its present petition, is both insufficient and unpersuasive to justify reopening this area of regulation.

Finding No. 3: The SMGB stated that there was no ambiguity in the language of the backfilling regulation itself, and that qualifying conditions for exemption through "grandfathering" were both clear and specific at the time the regulation was passed. The lead agency must have issued final approval of a reclamation plan and financial assurances prior to December 18, 2002. Those conditions had not been met by Golden Queen at the time the regulation was adopted. Golden Queen did not provide testimony or a request to be included as a grandfathered mine during the SMGB's original regulatory deliberations.

Finding No. 4: The SMGB expressed concern that granting the petition would set a dangerous precedent and would appear to be a significant reversal and weakening of the backfilling regulation. The SMGB has no intent to change its position on the necessity for backfilling and does not wish to send that message to the mining industry or the citizens of the state. Granting the petition could appear to be an open invitation for additional petitions and exemptions based upon special circumstances. Ample time was provided to hear such requests for exemption at the time the regulatory action was taken.

Finding No. 5: The SMGB concluded that Golden Queen had "unclean hands" in its present request for "equity and fairness" in the application of the backfilling regulation. Golden Queen appears to have conducted illegal mining operations prior to promulgation of the SMGB's backfilling regulations, and this activity did not put Golden

Queen in the "best of light" in making equitable arguments in support of its petition.

Finding No. 6: The SMGB concluded that the proposed surface mining operation was not simply mountain top removal, as was represented by the proponent, but was in fact an open-pit mine based on review of cross-sections, and was therefore subject to current backfilling regulation.

Finding No. 7: Concern was expressed that under the petition process, accepting the petition would make the SMGB an advocate of the petitioned regulatory request, in lieu of an impartial decision-making body. No mechanism appeared to be available to allow the SMGB to address this matter as a non-advocate in an impartial manner.

#### CONTACT PERSON

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#### AVAILABILITY OF PETITION

Any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). On September 7, 2006, the SMGB's office received a petition from Golden Queen, represented by Mr. James E. Good of the law firm Gresham Savage Nolan & Tilden (Petitioner), petitioning the board to amend section 3704.1(i). The petition met the criteria set forth pursuant to APA Section 11430.6. Golden Queen requested that the backfilling regulation be amended as follows:

1. Add to subsection (i) of Section 3704.1 the following:

*"A surface mining operation for which the lead agency has issued final approval of a financial assurance cost estimate (FACE) for an approved reclamation plan prior to December 18, 2002, and which surface mining operation had not yet begun the operations covered by the approved reclamation plan by that date, also is exempt from this regulation."*

OR



2. Amend subsection (i) of Section 3704.1 as follows:

“This regulation does not apply to any surface mining operation as defined in Public Resources Code Section 2735(a) and (b) for which lead agency has issued final approval of a reclamation plan and a financial assurance prior to December 18, 2002, or a financial assurance cost estimate (FACE) for the approved reclamation plan prior to that date for a surface mining operation that had not yet begun the operations covered by the approved reclamation plan by that date.”

The petition was supported by the SMARA lead agency, Kern County, in correspondence also dated September 7, 2006. Kern County suggested language however differed and further revised subsection (i) of Section 3704.1 to read as follows:

“(i) This regulation does not apply to any surface mining operation as defined in Public Resources Code Section 2735(a) and (b) for which the lead agency has used final approval of a surface mining permit and/or reclamation plan and a financial assurance or, alternatively, approved a financial assurance cost estimate, prior to December 18, 2002. Additionally, this exemption shall only apply to those affected surface mining permits and/or reclamation plans for which the lead agency has made a determination that said permit or plan has been deemed activated and was in full effect prior to December 18, 2002.”

Note that on October 27, 2006, Golden Queen amended its petition “*to adopt the proposed amendment to subsection (i) of 14 CCR 3704.1 advocated by Kern County.*”

#### SMGB ACTION

The SMGB at its regular business meeting held on December 14, 2006, moved to deny the petition. The SMGB at its regular business meeting held on January 11, 2007, moved to adopt and ratify the information and findings provided in the Executive Officer’s report, and transmit notice of its December 14, 2006, decision to deny the petition of Kern County and Golden Queen Mining Company regarding amendment of Section 3704.1 of Title 14 to the Office of Administrative Law, pursuant to Government Code Section 11340.7.

## OAL REGULATORY DETERMINATIONS

### CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

#### OFFICE OF ADMINISTRATIVE LAW

#### DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS

(Pursuant to title 1, section 270, of the California Code of Regulations)

#### STATE OF CALIFORNIA

#### OFFICE OF ADMINISTRATIVE LAW

**2007 OAL DETERMINATION NO. 1**  
(OAL FILE # CTU 06-0724-01)

**REQUESTED BY: JAMES MCCRITCHIE**

**CONCERNING: “NOTICE OF ELECTION” ISSUED BY THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.**

#### SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule is a “regulation” as defined in Government Code section 11342.600, and must, therefore be adopted pursuant to the Administrative Procedure Act (APA). OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.



## ISSUE

On July 24, 2006, James McRitchie (Petitioner) submitted a petition to OAL alleging that the California Public Employees Retirement System (CalPERS) issued, used, enforced, or attempted to enforce an underground regulation<sup>1</sup> in violation of Government Code section 11340.5.<sup>2</sup> The alleged underground regulations concern election to the CalPERS Board and are found in the "Notice of Election", specifically, the "Procedures for Becoming a Candidate" and the "Election Schedule." The challenged rules include requirements for personal identifying information on election forms, and various procedures and dates for submitting election materials. The Petitioner also challenges the wisdom of requiring partial Social Security Numbers. As noted above, OAL cannot base its decision on the wisdom or policy of an alleged underground regulation; but must limit its review to issues of administrative law.

## DETERMINATION

OAL determines that the Notice of Election, which includes the Procedures for Becoming a Candidate and the Election Schedule, contains underground regulations.

## FACTUAL BACKGROUND

CalPERS is administered by a 13-member Board of Administration, six of which are elected. The remaining members are designated by law to be on the Board. The Board of Administration is responsible for the management and control of CalPERS, including the exclusive control of the administration and investment of the Retirement Fund.

Section 20096 gives the Board broad authority to conduct the election of members:

The board shall cause ballots to be distributed to each active and retired member of the system in advance of each election, and shall provide for the return of the voted ballots to the board without cost to the member, and shall develop election procedures. The results shall be certified by the

<sup>1</sup> An underground regulation is defined in Title 1, California Code of Regulations, section 250:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>2</sup> Unless specified otherwise code references are to the California Government Code.

Secretary of State. The board may require all persons who perform election duties to certify, under penalty of perjury, that they properly performed those duties.

CalPERS has adopted regulations setting forth the procedures for conducting the election. Section 554.2 of Title 2 of the California Code of Regulations deals with the "Notice of Election":

The Election Coordinator shall distribute a Notice of Election in advance of each election containing candidate nomination and election procedures, eligibility criteria for candidates and voters, and the schedule of events. The Notice shall contain a statement of whether or not the incumbent intends to be a candidate for reelection.

Agency Election Officers shall provide such notification to eligible active members by direct distribution of the Notice of Election to members or posting in employee work areas. The Election Coordinator shall provide employers with sufficient copies of the Notice of Election to allow widespread notice to employees.

The Election Coordinator shall cause the Notice of Election to be mailed directly to eligible retired members by PERS.

Each Notice of Election is adopted by the Board before each election. The Notice of Election is considered as an agenda item and is discussed at an open meeting of the Benefits and Program Administration Committee. The committee's recommendation is sent to the Board for its action. The notice for the 2006 election was recommended for approval by the committee and was adopted by the Board on November 16, 2005. (CALPERS response, p. 3)

## PETITIONER'S ARGUMENT

The Petitioner argues that various parts of the Notice of Election are underground regulations. The specific areas are the schedule for election, the forms required by the Notice of Election and the information required in the Notice of Election, such as name, address, last six numbers of the Social Security Number, etc. The Petitioner argues that these elements meet the definition of "regulation" in Government Code section 11342.600 and must be adopted pursuant to the APA.

## AGENCY RESPONSE

CalPERS argues in response that the requirements in the Notice of Election are consistent with statutory and regulatory requirements and are not underground regulations. The forms referred to in the Notice of Election fall under the forms exception to the APA and are not, therefore, underground regulations.

## UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states, in part:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation. “Underground regulation” is defined in title 1, Cal. Code Regs. § 250 as follows:

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL is empowered to issue its determination as to whether or not an agency employs an underground regulation pursuant to section 11340.5 subdivision (b). An OAL determination that an agency is using an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference”<sup>3</sup> in any subsequent litigation of the issue.

## ANALYSIS

To determine that an agency is in violation of section 11340.5, it must be demonstrated that the alleged underground regulation actually is a regulation as defined by section 11342.600, that it has not been adopted pursuant to the APA, and that it is not subject to an express statutory exemption from the APA.

A regulation is defined in section 11342.600 as:

“... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to

implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, (1996)14 Cal.4<sup>th</sup> 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code § 11342 subd. (g).)

The first element of a regulation is whether the rule applies generally. For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order.<sup>4</sup> In this case, the Notice of Election applies to all members of CalPERS who seek election to the Board. It sets forth requirements and procedures the members must follow to be elected to the Board. The class of members who seek election will change from election to election and is not static. The first element required by *Tidewater* is therefore met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. In its response CalPERS argues that the statute instructs them to conduct the election. The Notice of Election is the means by which CalPERS fulfills its statutory duties. The issuance of the Notice of Election may be the choice that CalPERS makes to comply with its statutory obligation; however, the individual requirements in the Notice of Election, such as the partial Social Security Number, the specific number of signatures required, or the dates by which actions must be taken, are the options that CalPERS chooses to implement and make specific the general requirements of the statute. It is through the adoption of these individual requirements that CalPERS executes its statutory duties. The Notice of Election, then, implements, interprets or makes specific the law enforced or administered by CalPERS. The second element expressed in *Tidewater* is met.

OAL notes that the administration of elections will likely involve requirements that are individual to each

<sup>3</sup> *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244

<sup>4</sup> *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class.).

election, such as the dates by which actions must be taken. For example, dates might change from election to election depending on the election cycle. CalPERS might adopt a regulation establishing the criteria for setting the dates for submission of documents and the election itself. For example, the regulation could say:

The election shall take place three months before the expiration of the terms for which the election is held. The Notice of Election shall be prepared and issued three months before the election.

In this example, the actual dates could be established on a case-by-case basis based upon the regulatory requirements. But to the extent that requirements in the Notice of Election meet the definition of a “regulation” that information must be adopted pursuant to the APA.

The third step in the analysis is whether an exemption from the requirements of the APA applies to the challenged rule. Pursuant to section 11346, the procedures established in the APA “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.”

Section 11340.9 establishes several express exemptions from the APA. In its response, CalPERS alleges that the forms included in the Notice of Election are consistent with the statutory and regulatory election requirements and are, therefore, exempt from the APA pursuant to the “forms exemption” in section 11340.9 (c):

This chapter does not apply to any of the following:

...

(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.

This statutory provision contains a significant restriction on the use of the “forms” exemption. In a previous determination, OAL addressed the “forms exemption” from the APA:

According to the leading case, *Stoneham v. Rushen*,<sup>5</sup> the [statutory] language quoted directly above creates a ‘statutory exemption relating to *operational* forms.’ (Emphasis added.) An example of an operational form would be a form which simply provides an operationally convenient space in which, for example, applicants for licenses can write down information that existing provisions of law already require

them to furnish to the agency, such as the name of the applicant.”

“By contrast, if an agency form goes beyond *existing legal requirements*, then, under Government Code section 11342, subdivision (b), a formal regulation is ‘*needed to implement the law under which the form is issued.*’ For example, a hypothetical licensing agency form might require applicants to fill in marital status, race, and religion—when none of these items of information was required by existing law. The hypothetical licensing agency would be making new law: i.e., ‘no application for a license will be approved unless the applicant completes our application form, i.e., furnishes his or her name, marital status, race, and religion.’ [Emphasis added.]”

“In other words, according to the *Stoneham* Court, if a form contains ‘uniform substantive’ rules which are used to implement a statute, those rules must be promulgated in compliance with the APA. On the other hand, a ‘regulation is *not* needed to implement the law under which the form is issued’ (emphasis added) insofar as the form in question is a simple operational form limited in scope to *existing legal requirements*. [Emphasis original.]”<sup>6</sup>

In the case of the Notice of Election, the information required on the forms is not included in either the statutory or regulatory requirements for the conduct of an election. The law under which the form is issued does not include the identifying information, the last six digits of the Social Security Number, or other similar information.

OAL concludes that the “forms exemption” does not apply to the forms at issue in this determination because the information and requirements contained in the forms go beyond existing legal requirements.

## CONCLUSION

For these reasons, OAL concludes that the Notice of Election and the elements included in the Notice of Election contain underground regulations.

/s/

William L. Gausewitz  
Director

/s/

Kathleen Eddy  
Senior Counsel

<sup>5</sup> *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130

<sup>6</sup> **1993 OAL Determination No. 5**, CRNR 94, No. 2–Z, January 14, 1994, p. 61, 105; typewritten version, p. 266.

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## **DISAPPROVAL DECISIONS**

### **DEPARTMENT OF INSURANCE**

#### **DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS**

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at [www.oal.ca.gov](http://www.oal.ca.gov). You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916)323-6225 — FAX (916) 323-6826. Please request by OAL file number.

#### **STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW**

In re:  
DEPARTMENT OF INSURANCE

#### **REGULATORY ACTION:**

Title 10, California Code of Regulations

ADOPT SECTIONS 2698.23, 2698.23.1, 2698.24,  
2698.24.1, 2698.25, 2698.25.1, 2698.25.2, 2698.25.3,  
2698.26, 2698.27

#### **DECISION OF DISAPPROVAL OF REGULATORY ACTION**

(Gov. Code, sec. 11349.3)

OAL File No. 06-1130-01 S

#### **SUMMARY OF REGULATORY ACTION**

Section 10127.17 of the Insurance Code creates a Life and Annuity Consumer Protection Fund. Money in the fund is distributed by the Commissioner and exclusively dedicated to protecting consumers of life insurance and annuity products in this state. This regulatory action adopts regulations establishing the Life and Annuity Consumer Protection Program.

#### **DECISION**

On January 12, 2007, the Office of Administrative Law (OAL) disapproved the above referenced regulatory action for the following reasons: failure to comply with the authority, clarity, consistency, necessity and reference standards of Government Code section 11349.1; failure to include a summary and response to all public comments; and the statement of mailing for the 15 day comment period was inadequate.

Date: January 18, 2007

/s/

CRAIG S. TARPENNING  
Senior Staff Counsel

for: WILLIAM L. GAUSEWITZ  
Director

Original: Steven Poizner, Insurance Commissioner  
cc: Elena Fishman

## **SUMMARY OF REGULATORY ACTIONS**

### **REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

#### **AIR RESOURCES BOARD**

Evaporative Emissions

This action amends three regulations and incorporated test procedures by simplifying and streamlining existing motor vehicle evaporative emissions test procedures.

Title 13

California Code of Regulations

AMEND: 1961, 1976, 1978

Filed 01/18/07

Effective 02/17/07

Agency Contact: Alexa Malik (916) 322-4011

#### **ATHLETIC COMMISSION**

Ring

In this action, the State Athletic Commission is amending Title 4, California Code of Regulations, and



Section 523 to add rope–enclosed rings as an alternative to existing fence–enclosed rings for all non–kickboxing martial arts events. The amendment sets forth specific construction and safety requirements, establishes performance standards for both types of rings, and corrects cross–reference numbers for kickboxing ring requirements. Amended Section 523 is effective upon filing with the Secretary of State.

The original proposed text was adopted by the State Athletic Commission at its 4–26–06 public hearing under authority of Business and Professions Code sections 18611 and 18613, which expired on 7–1–06 pursuant to SB 1549 (2004). The text was modified for clarity, made available for 15–day public comment, and adopted as final text under interim authority of Department of Consumer Affairs pursuant to Business and Professions Code sec. 101.1(b). State Athletic Commission authority was re–established effective 1–1–07 pursuant to SB 247 (2006).

Title 4  
California Code of Regulations  
ADOPT : 523  
Filed 01/17/07  
Effective 01/17/07  
Agency Contact: Armando Garcia (916) 263–2195

**BUREAU OF AUTOMOTIVE REPAIR**  
**Lamp and Brake Stations and Adjusters**

This filing updates the regulations that identify the standards for licensing and operation of official brake and lamp adjustment stations and for the adjusters they must employ.

Title 16  
California Code of Regulations  
AMEND: 3305, 3306, 3307, 3308, 3309, 3310, 3315, 3316, 3320, 3321  
Filed 01/23/07  
Effective 02/22/07  
Agency Contact: James Allen (916) 255–4300

**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

**Training Specifications for Peace Officer Basic Courses**

This regulatory action would amend the provisions of the “Training and Testing Specifications for Peace Officer Basic Courses” publications that are incorporated by reference into POST regulations. The amendments deal with re–distributing hours throughout the learning domains (LDs) training and testing specifications, add Examination Review and Scenario Demonstration to each testable domain, establish Learning Domain #43–Emergency Management, combine the current

two–part Level III Module into a single component, and update other learning domains.

Title 11  
California Code of Regulations  
AMEND: 1005, 1007, 1080  
Filed 01/19/07  
Effective 01/19/07  
Agency Contact: Patricia Cassidy (916) 227–4847

**DEPARTMENT OF CORRECTIONS AND REHABILITATION**

**Use of Force**

Prior to the underlying emergency filing, section 4040.0, Article 3, Title 15 of the California Code of Regulations (CCR) pertained to the use of restraining devices on wards for security purposes in parole and institutional operations. Subsection (b) stated that only reasonable and necessary force shall be used but did not define what is meant by “reasonable” or “necessary”. This filing is a readoption of emergency regulations which were intended to specify and identify the circumstances as well as the amount of force that an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would consider necessary and reasonable, as prescribed by the Commission on Peace Officer Standards and Training, to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order. The emergency regulations were also intended to establish supervision, monitoring, and evaluation of force deployment.

Title 15  
California Code of Regulations  
ADOPT: 4034.0, 4034.1, 4034.2, 4034.3, 4034.4  
REPEAL: 4036.0, 4040.0  
Filed 01/18/07  
Effective 01/18/07  
Agency Contact: Sonja Dame (916) 263–3178

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Oriental Fruit Fly Interior Quarantine**

This is the certificate of compliance for the prior emergency regulation (OAL file no. 06–0907–03E) that established approximately 65 square miles in the Rail to area of San Bernardino as an area under quarantine for the Oriental fruit fly.

Title 3  
California Code of Regulations  
AMEND: 3423(b)  
Filed 01/18/07  
Effective 01/18/07  
Agency Contact: Stephen Brown (916) 654–1017

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Guava Fruit Fly Eradication Area**

This regulatory action is the Certificate of Compliance for the emergency filing that added Alameda County to the list of guava fruit fly eradication areas. (Prior OAL File Number 06-1004-03E; DFA File Numbers PH0665 and PH0693.)

## Title 3

California Code of Regulations

AMEND: 3591.13(a)

Filed 01/24/07

Effective 01/24/07

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Acala and Pima Quality Standards and Referendum**

This rulemaking package amends sections 3800.1 and 3800.2 of Title 2 to change the variety of Acala cotton that will be an approved variety within the San Joaquin Valley Quality Cotton District. The change is from the Acala Maxxa variety to the Acala Summit variety. These amendments do not affect the procedure to obtain approval for other varieties of cotton, rather it changes the cotton to which other varieties will be compared.

## Title 3

California Code of Regulations

AMEND: 3800.1, 3800.2

Filed 01/18/07

Effective 02/17/07

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Diaprepes Root Weevil Interior Quarantine**

This is the certification of compliance for an emergency action that added the Fairbanks Ranch in San Diego County and a small surrounding area to the existing quarantine for the Diaprepes Root Weevil based upon the discovery of three adult weevils in that area on August 15, 2006.

## Title 3

California Code of Regulations

AMEND: 3433(b)

Filed 01/18/07

Effective 01/18/07

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Diaprepes Root Weevil Interior Quarantine**

This is the certificate of compliance for the prior emergency regulation (OAL file no 06-0915-02E). The original emergency regulatory action established four new quarantine areas — two in Orange County and two in San Diego County. Both new quarantine areas in

San Diego County merged with earlier quarantine areas. The action added approximately one square mile surrounding the Newport Beach area and two square miles surrounding the Yorba Linda area of Orange County and approximately three square miles surrounding a portion of the Del Mar area and two square miles surrounding the Rancho Santa Fe area of San Diego County as additional areas under quarantine.

## Title 3

California Code of Regulations

AMEND: 3433(b)

Filed 01/18/07

Effective 01/18/07

Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF INSURANCE****Producer Licensing Background Review Guidelines**

This rulemaking is intended to repeal existing regulations dealing with producer licensing background review that deals only with insurance adjuster only and adopt four regulations that will encompass all license types. This is being done in order to be consistent and more effective in the regulating of producer background reviews. Additionally it will provide a clear and predictable scheme for use by DOI staff, Administrative Law Judges, and insurance producers in evaluating license discipline.

## Title 10

California Code of Regulations

ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4

REPEAL: 2691.18, 2691.19

Filed 01/23/07

Effective 02/22/07

Agency Contact: Denise Yuponce (916) 492-3171

**DEPARTMENT OF MANAGED HEALTH CARE****Language Assistance Programs**

This regulatory action adopts requirements for language assistance programs for health care service plans.

## Title 28

California Code of Regulations

ADOPT: 1330.67.04 REPEAL: 1300.67.8

Filed 01/24/07

Effective 02/23/07

Agency Contact: Emilie Alvarez (916) 445-9960

**DEPARTMENT OF SOCIAL SERVICES****Foster Youth Personal Rights**

In this regulatory action, the Department of Social Services amends regulations pertaining to small family homes, group homes, community treatment facilities, the transitional housing placement program, and foster family homes. The regulatory amendments relate to the rights of children in foster care and implement statutory

changes to Welfare and Institutions Code section 16001.9.

Title 22, MPP  
California Code of Regulations  
ADOPT: 86072.1 AMEND: 83064, 83072, 84072, 84079, 84172, 84272, 86072, 89372, 89379  
Filed 01/17/07  
Effective 02/16/07  
Agency Contact: Alison Garcia (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES**  
Division 22 State Hearing Amendments

This action amends Department of Social Services MPP Division 22 state administrative hearing procedures for review of county welfare department actions in administering public social services programs, such as CalWORKs, food stamps, and Medi-Cal. Amended regulations are effective 1-24-07.

Title MPP  
California Code of Regulations  
ADOPT: 22-901 AMEND: 22-001, 22-002, 22-003, 22-004, 22-009, 22-045, 22-049, 22-050, 22-053, 22-054, 22-059, 22-061, 22-063, 22-064, 22-065, 22-069, 22-071, 22-072, 22-073, 22-077, 22-078, 22-085 REPEAL: 22-074, 22-075, 22-076  
Filed 01/24/07  
Effective 01/24/07  
Agency Contact: Alison Garcia (916) 657-2586

**EMPLOYMENT DEVELOPMENT DEPARTMENT**  
Definition of "week" for Contribution and Benefit Purposes

This is a nonsubstantive change updating a cross-reference within the regulation.

Title 22  
California Code of Regulations  
AMEND: 143-1  
Filed 01/22/07  
Effective 02/21/07  
Agency Contact: Laura Colozzi (916) 654-7712

**FAIR POLITICAL PRACTICES COMMISSION**  
Officeholder Fundraising (SB 145)

This action amends 2 Cal. Code Regulations section 18544 and adopts sections 18531.65, 18531.63 and 18531.64 governing the cost of living adjustment for campaign contributions for 2006 (section 18544) and how bank accounts (18531.62), cumulation of contributions (18531.63) and winding down committees (18531.64) are to be calculated and addressed.

These regulations are exempt from OAL review, and subject only to the June 4, 1974 version of the APA. Fil-

ing of a certificate of compliance within 120 days will be required pursuant to section 11422.1 of the 1974 version of the APA.

Title 2  
California Code of Regulations  
ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544  
Filed 01/19/07  
Effective 01/19/07  
Agency Contact: John Wallace (916) 445-4812

**FISH AND GAME COMMISSION**  
Recreational Groundfish Fishing

This regulatory action deals with California's recreational groundfish fishing regulations in State waters within three miles of shore establishing seasons, depth constraints, and bag limits, and continuing the exception for year-round recreational fishing opportunities for shore-based anglers and divers.

Title 14  
California Code of Regulations  
ADOPT: 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 28.48, 28.49, 28.51, 28.52, 28.53, 28.57 AMEND: 1.91, 27.60, 27.65, 27.83 (amend and renumber to 27.51), 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90, 701 REPEAL : 27.67, 27.82  
Filed 01/18/07  
Effective 01/18/07  
Agency Contact: Sherrie Koell (916) 653-4899

**FRANCHISE TAX BOARD**  
Water's-Edge Election Group

In this regulatory action, the Franchise Tax Board amends a regulation pertaining to the "Water's-Edge Election" under Revenue and Taxation Code section 25110 to revise provisions regarding the inclusion of income and deductions for a category of foreign organized corporations included in the water's-edge group.

Title 18  
California Code of Regulations  
AMEND: 25110  
Filed 01/23/07  
Effective 02/22/07  
Agency Contact: Colleen Berwick (916) 845-3306

**STATE WATER RESOURCES CONTROL BOARD**  
Attainment strategy for pesticide-related toxicity in urban creeks

This regulatory action amends the Water Quality Control Plan for the San Francisco Bay Region to establish a water quality attainment strategy and total maximum daily load (TMDL) for Diazinon and pesticide-related toxicity in Bay Area urban creeks.

Title 23  
California Code of Regulations  
ADOPT: 3917  
Filed 01/18/07  
Agency Contact: Joanna Jensen (916) 657-1036

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN AUGUST 23, 2006 TO  
JANUARY 24, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

01/19/07 ADOPT: 18531.62, 18531.63, 18531.64  
AMEND: 18544  
01/11/07 AMEND: 1894.4, 1896.12  
01/09/07 ADOPT: 18534  
01/09/07 AMEND: 18707.1  
01/09/07 ADOPT: 18530.3  
01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106  
12/22/06 AMEND: 21906  
12/18/06 AMEND: 18703.4, 18730, 18940.2,  
18942.1, 18943  
12/18/06 AMEND: 18545  
12/18/06 ADOPT: 18421.3  
12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3,  
1859.78.5  
12/18/06 AMEND: 18312, 18316.5, 18326,  
18401, 18521, 18537.1, 18704.5,  
18705.5, 18730, 18746.2  
12/14/06 ADOPT: 18707.10  
12/13/06 ADOPT: 20108, 20108.1, 20108.12,  
20108.15, 20108.18, 20108.20,  
20108.25, 20108.30, 20108.35,  
20108.36, 20108.37, 20108.38,  
20108.40, 20108.45, 20108.50,  
20108.51, 20108.55, 20108.60,  
20108.65, 20108.70, 20108.75, 20108.80  
11/06/06 AMEND: 18216, 18421.1  
11/03/06 AMEND: 1859.73.2  
10/31/06 AMEND: 559.500, 559.501, 559.503,  
559.504, 559.505, 559.507, 559.508,  
559.509, 559.510, 559.511, 559.512,  
559.513, 559.515, 559.516, 559.517

10/12/06 AMEND: 714  
09/27/06 AMEND: 18754  
09/07/06 AMEND: 21904, 21905  
09/05/06 AMEND: 1859.2, 1859.76, 1859.83,  
1859.163.1  
08/23/06 AMEND: 1181.4

**Title 3**

01/24/07 AMEND: 3591.13(a)  
01/18/07 AMEND: 3800.1, 3800.2  
01/18/07 AMEND: 3433(b)  
01/18/07 AMEND: 3433(b)  
01/18/07 AMEND: 3423(b)  
01/09/07 AMEND: 3433(b)  
01/08/07 AMEND: 3591.6(a)  
01/08/07 AMEND: 3591.2(a)  
01/05/07 AMEND: 3406(b)  
01/05/07 AMEND: 3433(b)  
01/05/07 AMEND: 6625  
01/03/07 AMEND: 3424(b)  
12/20/06 AMEND: 3433(b)  
12/20/06 AMEND: 3423(b)  
12/19/06 ADOPT: 6310, 6312, 6314 AMEND:  
6170  
12/06/06 AMEND: 3591.6  
12/06/06 AMEND: 3700(c)  
11/30/06 ADOPT: 6128 AMEND: 6130  
11/16/06 AMEND: 3433(b)  
11/13/06 AMEND: 3423(b)  
11/08/06 AMEND: 3591.2(a)  
10/27/06 ADOPT: 765 AMEND: 760.4, Article  
3.5  
10/19/06 AMEND: 3591.6(a)  
10/12/06 ADOPT: 3424  
10/12/06 AMEND: 3433(b)  
10/12/06 AMEND: 3433(b)  
10/06/06 AMEND: 3700(c)  
10/06/06 AMEND: 3591.13(a)  
10/05/06 AMEND: 3589  
10/05/06 AMEND: 3433(b)  
10/02/06 AMEND: 3591.6(a)  
09/19/06 AMEND: 3433(b)  
09/12/06 AMEND: 3406(b)  
09/12/06 AMEND: 3591.12(a)  
09/08/06 AMEND: 3423(b)  
09/07/06 AMEND: 3433(b)  
09/05/06 AMEND: 3406(b)  
08/29/06 AMEND: 3433(b)  
08/24/06 AMEND: 3433(b)  
08/23/06 AMEND: 3591.12(a)

**Title 4**

01/17/07 ADOPT: 523  
01/11/07 AMEND: 1536



12/05/06	AMEND: 1582	3200.220,	3200.230,	3200.240,
11/22/06	AMEND: 1544 & 1658	3200.250,	3200.260,	3200.270,
11/16/06	ADOPT: 2422.1	3200.280,	3200.300,	3200.310,
11/03/06	AMEND: 10152, 10153, 10155, 10159, 10160, 10161, 10162	3300,	3310,	3315,
10/24/06	AMEND: 1486	3320,	3350,	3360,
10/16/06	AMEND: 1733	3400,	3405,	3410,
09/26/06	AMEND: 1976.8	3415,	3500,	3505,
		3510,	3520,	3530,
		3530.10,	3530.20,	3530.30,
		3530.40,	3540,	3610,
		3615,	3620,	3620.05,
		3620.10,	3630,	3640,
		3650		
<b>Title 5</b>		11/21/06	AMEND: 9100	
01/10/07	AMEND: 55806	09/25/06	ADOPT: 3400	
11/13/06	AMEND: 18013, 18054	<b>Title 10</b>		
11/08/06	AMEND: 850, 851, 852, 853, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5, 865, 866, 867, 870 REPEAL: 850.5, 880, 881, 882, 883, 884, 886, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901	01/23/07	ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4 REPEAL: 2691.18, 2691.19	
10/26/06	AMEND: 30023(c)	01/10/07	AMEND: 3528	
10/23/06	ADOPT: 11991, 11991.1, 11991.2	01/08/07	AMEND: 2698.52(c), 2698.53(b), 2698.56(c)	
10/16/06	ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7	01/03/07	ADOPT: 2642.4, 2643.8, 2644.24, 2644.25, 2644.26, 2644.27, 2644.50, AMEND: 2642.5, 2642.6, 2642.7, 2643.6, 2644.2, 2644.3, 2644.4, 2644.5, 2644.6, 2644.7, 2644.8, 2644.10, 2644.12, 2644.15, 2644.16, 2644.17, 2644.18, 2644.19, 2644.20, 2644.21, 2644.23	
09/29/06	ADOPT: 19833.5, 19833.6 AMEND: 19815, 19816, 19816.1, 19819, 19824, 19828.1, 19831	12/29/06	AMEND: 2696.1, 2696.2, 2696.3, 2696.5, 2696.6, 2696.7, 2696.9, 2696.10 REPEAL: 2696.4, 2696.8	
09/15/06	REPEAL: 18074.1(b), (c), (d), 18074.3, 18074.4, 18074.5, 18074.6	12/29/06	AMEND: 2052.1, 2052.4	
08/30/06	ADOPT: 15566, 15567, 15568 REPEAL: 15569	12/29/06	AMEND: 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, 2662.5	
<b>Title 8</b>		12/29/06	AMEND: 2632.5(c)	
12/29/06	AMEND: 1598, 1599	12/29/06	AMEND: 2222.10, 2222.11, 2222.12, 2222.14, 2222.15, 2222.16, 2222.17, 2222.19 REPEAL: 2222.13	
12/27/06	AMEND: 3385	12/29/06	ADOPT: 5327, 5357.1, 5358, 5358.1 AMEND: 5350, 5352	
12/21/06	AMEND: 5031	12/27/06	AMEND: 2498.6	
12/15/06	AMEND: 5006.1	12/26/06	ADOPT: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86, 2698.87, 2698.88, 2698.89, 2698.89.1 AMEND: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86	
11/14/06	AMEND: 6368	12/22/06	ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8	
11/14/06	AMEND: 3482, 5161, 5178	12/20/06	ADOPT: 2614, 2614.1, 2614.2, 2614.3, 2614.4, 2614.5, 2614.6, 2614.7, 2614.8, 2614.9, 2614.10, 2614.11, 2614.12, 2614.13, 2614.14, 2614.15, 2614.16, 2614.17, 2614.18, 2614.19, 2614.20, 2614.21, 2614.22, 2614.23, 2614.24, 2614.25, 2614.26, 2614.27	
11/08/06	AMEND: 17000 Appendix			
11/02/06	AMEND: 3650			
10/18/06	AMEND: 9768.5, 9768.10, 9788.11, 9788.31, 9789.33			
09/29/06	AMEND: 341, 341.1			
09/25/06	AMEND: 4920			
09/21/06	ADOPT: 10001, 10002, 10003			
09/19/06	ADOPT: 1532.2, 5206, 8359 AMEND: 5155			
<b>Title 9</b>				
12/29/06	ADOPT: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.080, 3200.090, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210,			

12/19/06	AMEND: 2690.90, 2690.91, 2690.92, 2690.93, 2690.94	1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425
12/13/06	ADOPT: 2534.40, 2534.41, 2534.42, 2534.43, 2534.44, 2534.45, 2534.46	
11/15/06	AMEND: 2697.6, 2697.61	12/13/06 AMEND: 553.70
11/09/06	AMEND: 2498.5	12/06/06 ADOPT: 2022, 2022.1
11/09/06	AMEND: 2534.27, 2534.28	12/01/06 ADOPT: 2479
10/24/06	ADOPT: 2303, 2303.1, 2303.2, 2303.3, 2303.4, 2303.5, 2303.6, 2303.7, 2303.8, 2303.9, 2303.10, 2303.11, 2303.12, 2303.13, 2303.14, 2303.15, 2303.16, 2303.17, 2303.18, 2303.19, 2303.20, 2303.21, 2303.22, 2303.23, 2303.24, 2303.25	11/13/06 AMEND: 2111, 2112, 2441, 2442, 2444.2, 2445.1, 2445.2, 2446
10/16/06	ADOPT: 2194.9, 2194.10, 2194.11, 2194.12, 2194.13, 2194.14, 2194.15, 2194.16, 2194.17	11/13/06 AMEND: 2445.2(a)
10/10/06	AMEND: 2498.4.9	10/30/06 ADOPT: 118.00
10/03/06	AMEND: 2498.5	10/27/06 AMEND: 423.00
10/02/06	AMEND: 2248.4, 2249.1, 2249.2, 2249.6, 2249.7, 2249.8, 2249.9, 2249.10, 2249.11, 2249.12, 2249.13, 2249.14, 2249.15, REPEAL: 2248.11, 2248.12, 2248.19	10/16/06 AMEND: 1956.8, 2404, 2424, 2425, 2485
09/20/06	AMEND: 2318.6, 2353.1	10/05/06 AMEND: Section 1
09/14/06	AMEND: 3528	09/14/06 AMEND: 25.06, 25.07, 25.08, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22
08/29/06	AMEND: 2699.6600	09/11/06 ADOPT: 2467.8, 2467.9 AMEND: 2467, 2467.1, 2467.2, 2467.3, 2467.4, 2467.5. 2467.6, 2467.7, Incorporated Documents REPEAL: 2467.8, Incorporated Test Method 512
08/28/06	ADOPT: 803, 810, 810.1, 810.2, 810.3, 810.4, 810.5, 810.6, 810.7 AMEND: 800, 801, 802, 804, 806, 807	09/07/06 AMEND: 1956.1, 1956.8, 2023.1, 2023.4
<b>Title 11</b>		08/24/06 AMEND: 28.22
01/19/07	AMEND: 1005, 1007, 1080	<b>Title 13, 17</b>
12/21/06	ADOPT: 80.3	12/27/06 ADOPT: 93116.3.1 AMEND: 2452, 2456, 2461, 93115, 93116.2, 93116.3
12/21/06	AMEND: 1070, 1081, 1082	12/06/06 ADOPT: 2299.1, 93118
12/21/06	AMEND: 48.6	<b>Title 14</b>
10/13/06	AMEND: 30.5	01/18/07 ADOPT: 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 28.48, 28.49, 28.51, 28.52, 28.53, 28.57 AMEND: 1.91, 27.60, 27.65, 27.83 (amend and renumber to 27.51), 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90, 701 REPEAL: 27.67, 27.82
10/13/06	AMEND: 30.1	12/28/06 ADOPT: 25231
<b>Title 13</b>		12/26/06 AMEND: 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1712, 1714, 1720, 1721, 1721.2, 1721.3, 1721.3.1, 1721.4, 1721.5, 1721.6, 1721.7, 1721.8, 1721.9, 1722, 1722.1.1, 1722.3, 1722.4, 1722.5, 1722.7, 1723, 1723.5, 1723.7, 1723.8, 1723.9, 1724 1724.1, 1724.3, 1724.4, 1724.6, 1724.8, 1724.9, 1724.10, 1740.1, 1740.3, 1740.5, 1741, 1742, 1743, 1744, 1744.2, 1744.3, 1744.4, 1744.5, 1744.6, 1745, 1745.8, 1745.10, 1746.2, 1747, 1747.1, 1747.2, 1747.3,
01/18/07	AMEND: 1961, 1976, 1978	
01/16/07	ADOPT: 2189 AMEND: 2180, 2180.1, 2181, 2182, 2183, 2185, 2186, 2187, 2188	
12/27/06	ADOPT: 1300 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375,	

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1748.3, 1760, 1771, 1774, 1776, 1778,  
1779, 1821, 1830, 1831, 1832, 1850,  
1854, 1855, 1856, 1857, 1858, 1863,  
1865, 1881, 1881.5, 1882, 1914, 1920.1,  
1920.2, 1920.3, 1931, 1931.1, 1931.2,  
1931.5, 1932, 1933.1, 1933.2, 1933.3,  
1935.1, 1935.2, 1936, 1937.1, 1941,  
1942, 1942.1, 1942.2, 1950.1, 1954,  
1960, 1961, 1962, 1963, 1966, 1971,  
1981, 1981.2, 1995.1, 1996.8, 1997.1,  
1997.2, 1997.3, 1997.4, 1997.5, 1998.2

12/19/06 AMEND: 105.1, 120.01, 149.1, 150,  
150.02, 150.03, 150.05, 180.3, 180.15,  
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12/05/06 AMEND: 2305, 2310, 2320

12/01/06 AMEND: 163, 164

11/27/06 ADOPT: 18660.5, 18660.6, 18660.7,  
18660.8, 18660.9, 18660.10, 18660.11,  
18660.12, 18660.13, 18660.14,  
18660.15, 18660.16, 18660.17,  
18660.18, 18660.19, 18660.20,  
18660.21, 18660.22, 18660.23,  
18660.24, 18660.25, 18660.30,  
18660.31, 18660.32, 18660.33

11/27/06 ADOPT: 4970.49, 4970.50, 4970.51,  
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4970.56, 4970.57, 4970.58, 4970.59,  
4970.60, 4970.61, 4970.62, 4970.63,  
4970.64, 4970.65, 4970.66, 4970.67,  
4970.68, 4970.69, 4970.70, 4970.71,  
4970.72

11/22/06 AMEND: 939.15, 959.15

11/16/06 AMEND: 916.5(e), 936.5(e), 956.5(e),  
916.9, 936.9, 956.9

11/14/06 AMEND: 5101, 5104

11/07/06 AMEND: 11900

11/02/06 AMEND: 183

10/19/06 AMEND: 632(b)(72)

10/11/06 AMEND: 895, 895.1, 1038, 1038(f)

10/06/06 AMEND: 670.2

09/20/06 AMEND: 895.1, 898, 914.8, [934.8,  
954.8], 916, [936, 956], 916.2 [936.2,  
956.2], 916.9, [936.9, 956.9], 916.11,  
[936.11, 956.11], 916.12, [936.12,  
956.12], 923.3, [943.3, 963.3], 923.9,  
[943.9, 963.9]

09/19/06 AMEND: 502

09/15/06 AMEND: 851.8, 851.23, 851.51.1,  
851.85, 852.3, 851.4, 851.10, 851.10.1

08/31/06 AMEND: 27.80

**Title 15**

01/18/07 ADOPT: 4034.0, 4034.1, 4034.2, 4034.3,  
4034.4 REPEAL: 4036.0, 4040.0

12/19/06 ADOPT: 3413.1 AMEND: 3413

12/04/06 AMEND: 3041.2, 3053, 3177, 3331,  
3375

11/03/06 AMEND: 3084.1

11/03/06 AMEND: 3375.2, 3377.1

10/06/06 ADOPT: 2275

10/03/06 ADOPT: 3352.2 AMEND: 3350.1,  
3352.1, 3354, 3358

**Title 16**

01/23/07 AMEND: 3305, 3306, 3307, 3308, 3309,  
3310, 3315, 3316, 3320, 3321

01/11/07 ADOPT: 2475

01/10/07 AMEND: 974

12/27/06 ADOPT: 1713 AMEND: 1717

12/20/06 AMEND: 1397.61(b)

12/18/06 ADOPT: 980.2, 980.3 AMEND: 980.1

12/07/06 ADOPT: 1793.8 AMEND: 1793.7

12/05/06 AMEND: 1397.12

11/16/06 AMEND: 1397.60, 1397.61, 1397.62

11/16/06 AMEND: 1351.5, 1352

11/16/06 AMEND: 28

11/16/06 ADOPT: 1399.170.20.1 AMEND:  
1399.151.1

11/15/06 AMEND: 4120, 4121, 4161, 4162

11/15/06 ADOPT: 1034.1 AMEND: 1021, 1028,  
1034

11/08/06 AMEND: 4130

11/02/06 AMEND: 3394.6

10/31/06 AMEND: 100, 102, 109, 111, 117, 136

10/26/06 AMEND: 345

10/17/06 AMEND: 928

10/11/06 AMEND: 3303.2, 3340.15, 3340.18,  
3340.32, 3340.42, 3394.5

10/03/06 AMEND: 70

09/28/06 AMEND: 1399.156.4

09/26/06 AMEND: 1579

09/12/06 AMEND: 384

09/07/06 ADOPT: 1399.391

08/31/06 ADOPT: 1727.1

08/25/06 AMEND: 1922, 1936, 1948

**Title 17**

01/09/07 AMEND: 93000

01/08/07 ADOPT: 2641.56, 2641.57 AMEND:  
2641.30, 2641.45, 2641.55, 2643.5,  
2643.10, 2643.15 REPEAL: 2641.75,  
2641.77

11/27/06 AMEND: 94010, 94011, 94167, and  
Incorporated Documents  
11/07/06 AMEND: 54342, 56076  
11/06/06 AMEND: 1000600, 100601, 100602,  
100603, 100604, 100605, 100606,  
100607, 100608, 100609, 100610  
10/26/06 AMEND: 2500, 2505  
10/17/06 AMEND: 93102.5  
10/12/06 ADOPT: 6500.1, 6500.5, 6500.19,  
6500.25, 6500.28, 6500.31, 6500.35,  
6500.39, 6500.45, 6500.46, 6500.57,  
6500.59, 6500.65, 6500.67, 6500.69,  
6500.70, 6500.74, 6500.77, 6500.80,  
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10/05/06 ADOPT: 100001, 100002, 100003,  
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10/04/06 AMEND: 57310(b)(3), 57332(c)(3)(A),  
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09/11/06 ADOPT: 100000

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01/03/07 AMEND: 1610  
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11/13/06 AMEND: 1699, 1802  
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09/08/06 ADOPT: 1125, 1423 AMEND: 1123,  
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11/14/06 ADOPT: 902.9, 902.19, 906.1, 906.2,  
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12/14/06 AMEND: 1602, 1602.1, 1604, 1605,  
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12/29/06 AMEND: Appendix X of Chapter 11 of  
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